

This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`





FH
FA
AM
v. 1-4
1878-81

THE

AMERICAN

BAR ASSOCIATION.

CALL FOR A CONFERENCE; PROCEEDINGS OF CONFERENCE;
FIRST MEETING OF THE ASSOCIATION;
OFFICERS, MEMBERS, ETC.

PHILADELPHIA:
JACKSON BROS., PRINTERS, 404 LIBRARY STREET.
1878

279678

[illegible] PUBLIC LIBRARY

CONTENTS.

PAGE

Call 4

Proceedings of Conference 5

Proceedings of First Meeting 21

Constitution 30

Officers 33

Committees 38

Members 40

CALL FOR A MEETING

TO FORM AN

AMERICAN BAR ASSOCIATION.

DEAR SIR:

It is proposed to have an informal meeting at Saratoga, N. Y., on Wednesday morning, August 21, 1878, to consider the feasibility and expediency of establishing an AMERICAN BAR ASSOCIATION. The suggestion came from one of the State Bar Associations, in January last, and the undersigned have been favorably impressed by it. A body of delegates, representing the profession in all parts of the country, which should meet annually, for a comparison of views and friendly intercourse, might be not only a pleasant thing for those taking part in it, but of great service in helping to assimilate the laws of the different States, in extending the benefit of true reforms and in publishing the failure of unsuccessful experiments in legislation.

This circular will be sent to a few members of the Bar in each State,—whom, it is thought, such a project might interest.

If possible, we hope you will be present on the day named at Saratoga; but in any event, please communicate your views on the subject of the proposed organization to Simeon E. Baldwin, New Haven, Conn., who will report to the meeting the substance of the responses received.

BENJAMIN H. BRISTOW, KENTUCKY.
WILLIAM M. EVARTS, NEW YORK.
GEORGE HOADLY, OHIO.
HENRY HITCHCOCK, MISSOURI.
CARLETON HUNT, LOUISIANA.
RICHARD D. HUBBARD, CONNECTICUT.
ALEXANDER R. LAWTON, GEORGIA.
RICHARD C. McMURTRIE, PENNSYLVANIA.
STANLEY MATHEWS, OHIO.
E. J. PHELPS, VERMONT.
JOHN K. PORTER, NEW YORK.
LYMAN TRUMBULL, ILLINOIS.
CHARLES R. TRAIN, MASSACHUSETTS.
J. RANDOLPH TUCKER, VIRGINIA.

JULY 1, 1878.

PROCEEDINGS

OF

THE CONFERENCE CALLED FOR THE PURPOSE OF ORGANIZING

A NATIONAL BAR ASSOCIATION,

AND OF THE

FIRST ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION.

A number of members of the bar, called together by a circular letter for the purpose of forming a National Bar Association, met in the court room of the Town Hall, at Saratoga Springs, New York, on Wednesday, August 21st, 1878, at 10 o'clock in the morning. Mr. Roger Averill, of Danbury, Connecticut, called the meeting to order and nominated as Temporary Chairman, Mr. John H. B. Latrobe, of Baltimore, who was unanimously elected.

Mr. Simeon E. Baldwin of New Haven, Connecticut, nominated Mr. Francis Rawle, of Philadelphia, as Secretary, who was unanimously elected.

Mr. Latrobe, upon taking the chair, briefly addressed the meeting.

Mr. Bullard, of Saratoga, nominated Mr. Isaac Grant Thompson, of Troy, New York, as an additional Secretary of the meeting; he was unanimously elected.

Mr. Baldwin stated that a register had been prepared, to be signed by gentlemen present by invitation from different

States, and Mr. Thompson proceeded to call the roll of States.

Pending the call, a gentleman present asked whether members of the bar present at the meeting, who had not received special invitations, were to be considered as members of the Conference.

A motion was then made that a committee of five on permanent organization, be appointed.

Mr. Semmes, of New Orleans, suggested that the meeting be first organized by those present who had received invitations, and, upon the motion pending having been withdrawn, put his remarks into the form of a motion, which was *adopted.*

The call of States was then proceeded with, when Mr. Armstrong, of Williamsport, Pennsylvania, moved to reconsider the vote upon Mr. Semmes' resolution. A discussion then followed, in which Mr. Poché, of Louisiana, Mr. Smith, of Albany, and Mr. Baldwin took part. The reading of the circular of invitation was then called for; after it had been read, the President ruled that, in order to solve the difficulty and prevent a lengthy discussion, the original motion of Mr. Semmes still stood, and requested those present who had received invitations to register their names.

The names of those present who registered their names were as follows:

ARKANSAS.

U. M. Rose.

CONNECTICUT.

John C. Day,
Simeon E. Baldwin,
Roger Averill,
Asa B. Woodward,
W. F. Willcox.
Charles B. Andrews,
Lyman D. Brewster,
Calvin G. Child,
Charles J. McCurdy,

DISTRICT OF COLUMBIA.

J. Hubley Ashton.

GEORGIA.

L. N. Whittle, George A. Mercer.

INDIANA.

Thos. F. Davidson, R. S. Taylor.

IOWA.

John N. Rogers.

KENTUCKY.

B. H. Bristow, James S. Pirtle.

LOUISIANA.

Edwin T. Merrick, Carleton Hunt,
Thos. J. Semmes, Thos. Allen Clark,
Thos. L. Bayne, Felin P. Poché.

MARYLAND.

Julian J. Alexander, John H. B. Latrobe,
Charles J. Bonaparte, Henry Stockbridge,
A. Leo Knott, Edward Otis Hinkley.
William A. Fisher,

MASSACHUSETTS.

Daniel A. Richardson, Edward L. Pierce,
Gustavus A. Somerby, G. N. Baldwin,
Francis W. Hurd, Frank Goodwin,
William Gaston, Alfred Hemenway.

MICHIGAN.

O. J. Atkinson.

MISSISSIPPI.

Joseph E. Leigh.

MISSOURI.

James O. Broadhead, J. B. Henderson,
Henry Hitchcock, P. Bliss.

NEBRASKA.

N. C. Abbott, George K. Amory.

NEW JERSEY.

A. Q. Keasbey.

NEW YORK.

George H. Forster, E. F. Bullard,
Benjamin A. Willis, Henry L. Burnett,
J. B. Perkins, Henry Smith,
Wm. C. Ruger, Homer A. Nelson,
Isaac Grant Thompson, Calvin Frost.

OHIO.

Rufus King, Calvin S. Brice,
Wm. T. McClintock.

PENNSYLVANIA.

Albert A. Outerbridge, Francis Rawle,
Wm. H. Armstrong, L. D. Shoemaker,
S. A. Bridges, Henry Green.

TENNESSEE.

Henry G. Smith.

VERMONT.

Edward J. Phelps, Charles N. Davenport,
Guy C. Noble, J. B. Bromley,
Luke P. Poland, Hiram F. Stevens.

VIRGINIA.

Legh R. Page.

Mr. Baldwin moved that a committee on Permanent Organization and Credentials be appointed, to consist of one from each State represented and to be appointed by the President. *Adopted.*

The President appointed the following as the committee:

U. M. Rose.....Arkansas.
Simeon E. Baldwin.....Connecticut.
J. Hubley Ashton.....District of Columbia.
L. N. Whittle.....Georgia.
Thos. F. Davidson.....Indiana.
J. N. Rogers Iowa.
B. H. Bristow.....Kentucky.
Carleton Hunt.....Louisiana.
Edward O. Hinkley.....Maryland.
William Gaston.....Massachusetts.
J. B. Henderson.....Missouri.
George K. Amory.....Nebraska.
A. Q. Keasbey.....New Jersey.
Henry Smith.....New York.
Rufus King.....Ohio.
Henry Green.....Pennsylvania.
Henry G. Smith.....Tennessee.
E. J. Phelps.....Vermont.
Legh R. Page.....Virginia.

After a recess the Conference was called to order, and the Committee on Permanent Organization and Credentials reported the following resolution:

Resolved, That all gentlemen who have signed the register this day are properly accredited and constitute the members of this Conference. *Adopted.*

The committee then reported the following nominees for permanent officers of the Conference:

President, BENJAMIN H. BRISTOW, of Kentucky.
Secretaries, FRANCIS RAWLE, of Pennsylvania.
ISAAC GRANT THOMPSON, of New York.

The Conference proceeded to the election of permanent officers, and the gentlemen reported by the committee were unanimously elected.

The temporary officers of the Conference retired, and the permanent officers took their places.

Mr. Hunt, of Louisiana, offered the following resolution:

Resolved, That the meeting do now proceed to organize a National American Bar Association, and that a committee of nine be appointed by the chair, to frame an appropriate constitution and by-laws.

Mr. Hinkley moved that the committee report at 10 o'clock A. M., on Thursday, August 22d.

Mr. Phelps moved to admend, by substituting 5 o'clock, P. M., on Wednesday, August 21st.

The amendment was adopted, and the motion, as amended, was then *adopted*.

The President appointed the following Committee on Constitution and By-Laws:

Carleton Hunt.....Louisiana.
Simeon E. Baldwin.....Connecticut.
Henry Hitchcock.....Missouri.
Edward J. Phelps.....Vermont.
James S. Pirtle.....Kentucky.
Henry Smith.....New York.
Rufus King.....Ohio.
William Gaston.....Massachusetts.
Henry Green.....Pennsylvania.

Mr. Bullard moved that a committee of five be appointed to report additional candidates for membership of the Conference, from any members of the bar now present in Saratoga. *Adopted.*

The President appointed, as the committee under this resolution,

E. F. Bullard.....New York.
J. H. Ashton.....District of Columbia.
R. S. Taylor.....Indiana.
A. Q. Keasbey.....New Jersey.
Charles B. Andrews.....Connecticut.

On motion the Conference *adjourned*, to meet at 5 P. M.

WEDNESDAY, AUGUST 21st, 1878. 5 P. M.

The Conference was called to order by the President.

Mr. Bullard, chairman of the Committee on Additional Candidates for Membership, reported a list of candidates, and offered a motion that the gentlemen named should be admitted as members of the Conference upon the same footing as those who signed the roll at the opening session. *Adopted.*

The list was as follows:

CONNECTICUT.

Henry E. Pardee.

DISTRICT OF COLUMBIA.

H. H. Wells, William A. Meloy.

INDIANA.

R. Lowry, Walter Q. Gresham.
Charles W. Fairbanks,

KENTUCKY.

A. E. Willson.

MARYLAND.

Charles Beasten, Jr. Richard J. Gittings.
David G. McIntosh,

MISSOURI.

George W. Bailey.

NEBRASKA.

James Laird.

NEW JERSEY.

John W. Taylor, A. Q. Garretson,
Ludlow McCarter, Charles Borcherling.

NEW YORK.

Gilbert Sayres, John Winslow,
W. A. Lyon, A. Pond,
Nathan Burchard, E. C. Sprague.

OHIO.

Edgar M. Johnson.

VERMONT.

Lyman G. Hinckley, Norman Paul.

Mr. Baldwin moved that all gentlemen who had been invited to take part in the Conference and had notified Mr. Baldwin of their desire to be present at the meeting, in response to the circular, should be members of the Conference.

The names of such gentlemen are as follows:

CONNECTICUT.

Origen S. Seymour, Frederick T. Kingsbury,
William Hamersley, J. T. Platt.
George M. Woodruff, T. H. Russell.

DELAWARE.

Anthony Higgins.

FLORIDA.

Charles W. Jones.

GEORGIA.

James S. Hook, N. J. Hammond.

ILLINOIS.

David Davis, O. H. Browning,
Edward G. Mason, Gustave Koerner.

INDIANA.

Greene Durbin, W. P. Fishback,
A. Iglehart, George A. Bicknell.
James S. Frazer,

IOWA.

William G. Hammond.

KENTUCKY.

Henry Rucker.

MAINE.

A. A. Strout, F. A. Wilson.

MARYLAND.

R. Stockett Mathews, George M. Sharp,
Richard M. Venable.

MASSACHUSETTS.

Henry W. Muzzey, M. P. Knowlton,
Edmund H. Bennett, M. G. B. Swift,
D. W. Bond, C. V. Bell,
Charles R. Train, Leonard A. Jones,
James B. Thayer, A. A. Ranney,
S. O. Lamb, H. A. Scudder.

MISSOURI.

A. Comingo, William P. Wade,
Albert Todd, John C. Orrick,
James E. Withrow, Edward C. Kehr.
John M. Krum,

NEBRASKA.

D. G. Hall,
S. H. Calhoun,
T. M. Marquett,
S. B. Galey,
S. B. Pound.

NEW HAMPSHIRE.

Samuel C. Eastman,
C. W. Stanley,
A. H. Hatch.

NEW JERSEY.

Gustavus N. Abeel.

NEW YORK.

Elliott F. Shepard,
Wm. Allen Butler,
Wm. Walter Phelps,
Charles F. Blake,
Dorman B. Eaton,
James Emott,
Edward Mitchell,
Albert Mathews,
Sherburne R. Eaton,
H. R. Durfee,
Charles A. Richardson,
Mathew Hale,
Clarkson N. Potter,
A. S. Sullivan.

OHIO.

Charles C. Baldwin,
N. W. Evans,
E. L. DeWitt,
R. K. Shaw,
W. D. Young,
N. Merrill,
S. W. Morris,
Basil Meek,
James Irvine,
W. E. Hackedorn.

PENNSYLVANIA.

Thomas E. Franklin,
Samuel C. Perkins,
George M. Dallas,
Benjamin H. Brewster,
James T. Mitchell.

RHODE ISLAND.

C. C. Van Zandt.

SOUTH CAROLINA.

Henry E. Young.

VERMONT.

William E. Johnson.

VIRGINIA.

Alexander Hamilton, J. W. Daniel,
Robert Stiles, William H. Payne.
Moses Walton,

WEST VIRGINIA.

John A. Hutchinson.

Mr. Winslow moved, as an amendment, that the names of these gentlemen should be submitted to the Committee on Membership, for their consideration. After some debate on this amendment, it was withdrawn.

Mr. Baldwin amended his motion by adding to it, that all gentlemen who had signed the call for the meeting should be considered as members of the Conference.

The motion as amended was *adopted.*

The names of those who signed the call, but were not present at the Conference, are as follows:

CONNECTICUT.

Richard D. Hubbard.

GEORGIA.

Alexander R. Lawton.

ILLINOIS.

Lyman Trumbull.

OHIO.

George Hoadly, Stanley Mathews.

NEW YORK.

William M. Evarts, John K. Porter.

PENNSYLVANIA.

Richard C. McMurtrie.

VIRGINIA.

J. Randolph Tucker.

Mr. Hunt, from the Committee on Framing a Constitution reported a draft of a Constitution, as follows:

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as "The American Bar Association." Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each annual meeting for the year ensuing:—A President, (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State; the Council shall be a Standing Committee on nominations for office; an Executive Committee, to be composed of the Secretary and Treasurer, together with three members of the Council to be chosen by the Association, one of whom shall be chairman of the Committee.

The following Committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

On Jurisprudence;
On Judicial Administration and Remedial Procedure;
On Legal Education and Admissions to the Bar;
On Commercial Law;

On International Law;
On Publications;
On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be *ex officio* chairman of such Council.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the State to the Bar of which the persons nominated belong. In default of such a Council in any State, nominations may be made by the General Council of the Association. All elections shall be by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them, upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association, upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any annual meeting of the Association, by a majority of the members

present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting.

CONSTRUCTION.

ARTICLE XI.—The word *State*, wherever used in this Constitution, shall be deemed to be equivalent to *State*, *Territory* and the *District of Columbia*.

Mr. Hunt moved the adoption of the Constitution reported as a whole. An amendment to this motion, that the proposed Constitution be considered by sections, was offered and accepted by Mr. Hunt. The motion as amended was *adopted.*

Article I was then adopted as reported.

Article II was read. Mr. Amory moved to amend by changing the numeral "five" to "three."

Mr. Hitchcock opposed the amendment. It was unanimously rejected, and the article was adopted as reported.

Article III was read. Mr. Bullard moved as an amendment, that there be a Vice-President for each judicial district of the United States, instead of for each State. After some discussion, the motion was withdrawn.

Mr. Ashton moved, as an amendment, that the designation of the Committee on Jurisprudence should be changed to the "Committee on Jurisprudence and Law Reform." *Adopted.*

Mr. Rogers moved to amend, by providing for the creation of a Recording Secretary and a Corresponding Secretary. Mr. Hitchcock and Mr. Hunt spoke in favor of the Article as reported. Mr. Rogers withdrew his amendment.

Article III was then adopted as amended.

Article IV was read. Mr. Hinkley moved to amend, by referring nominations for membership to the Council, and not to the Local Council for the same State as the nominee, and spoke in favor of his amendment.

Mr. Hunt spoke at length against the amendment.

Mr. Phelps also favored the adoption of the section as reported.

Mr. Hinkley's amendment was, upon a vote, rejected.

Mr. Ashton moved to amend, by providing that the nominations for membership by the Local Councils should be unanimous.

The amendment was rejected.

Article IV was then adopted as reported.

Article V was adopted as reported.

Article VI was adopted as reported.

Article VII was adopted as reported.

Article VIII was adopted as reported.

Article IX was read. Mr. Semmes moved to amend, by providing that "the annual meeting shall consist of at least thirty members."

The Committee adopted the amendment, and incorporated it in the section.

Mr. Whittle suggested that some regard should be had to the number of States represented at any meeting, but did not offer a motion to amend in accordance with his suggestion.

Mr. Poland objected to requiring any specific number in order to constitute a quorum.

Mr. Baldwin moved to amend the Article, by striking out the provision that thirty should constitute a quorum, and providing that a quorum should consist of those members present at any meeting. This amendment was then adopted, and

Article IX was adopted as amended.

Article X was read. Mr. Armstrong moved to amend, by adding the words: "but no such change shall be made at any meeting at which less than thirty members are present."

A motion was made to amend this amendment by providing that no change in the Constitution should be made, except upon a vote of at least thirty members in the affirmative. This amendment was not seconded, and was not accepted by Mr. Armstrong.

A motion was made to amend Mr. Armstrong's amendment by striking out the numeral "thirty," in the amendment, and inserting the numeral "fifty." *Rejected.*

Mr. Armstrong's amendment was then adopted, and Article X was adopted as amended.

Article XI was adopted as reported.

Mr. Hunt moved the adoption of the Constitution as a whole. *Adopted.*

Mr. Hunt moved that the present meeting be considered the first annual meeting of the Association. *Adopted.*

A motion was made, instructing the Secretary to have the Constitution printed for the use of members at the next meeting. *Adopted.*

Mr. Hunt moved that the Association proceed to elect members of the Council, in accordance with the Constitution.

Mr. Hitchcock moved, as a substitute, that the Conference resolve itself into the American Bar Association, and that the officers of the Conference be requested to act as officers of the Association for the present. After some discussion, the substitute was withdrawn, and Mr. Hunt's motion was then *adopted.*

An election was then held for members of the Council. [The names of the members of the Council elected appear elsewhere in the list of officers.]

It was moved that the Council report a list of nominations for officers at 10 o'clock on Thursday morning. *Adopted.*

On motion, the meeting adjourned to meet on Thursday, at 10 o'clock, A. M.

THURSDAY, AUGUST 22d, 1878. 10 A. M.

The meeting was called to order by the President.

Mr. Poland, from the Council, reported a list of members of the bar from different States—no Local Councils having yet been elected—and moved that the Association proceed to ballot upon the admission of the gentlemen whose names were reported by the Council. *Adopted.*

The following named gentlemen, so reported, were then elected members of the Association:

ARKANSAS.

George A. Gallagher, James C. Tappan,
Hermon Carlton.

DISTRICT OF COLUMBIA.

Richard T. Merrick, Walter S. Cox,
Nathaniel Wilson.

INDIANA.

A. W. Hendricks.

IOWA.

George G. Wright, Oliver P. Shiras.

KENTUCKY.

John W. Stevenson, James B. Beck.

LOUISIANA.

George W. Race, Joseph H. Acklen.

MAINE.

William P. Frye.

MARYLAND.

Charles Marshall, A. B. Hagner,
William J. Ross.

MICHIGAN.

Thomas M. Cooley, Archibald McDowell,
John Atkinson, Edwin Wiletts.

MISSISSIPPI.

Jas. T. Harrison, T. C. Catchings.

NEBRASKA.

Charles F. Manderson.

NEW HAMPSHIRE.

Gilman Marston, Ossian Ray.

NEW JERSEY.

Garret D. W. Vroom, William E. Potter.

PENNSYLVANIA.

George W. Biddle, George Shiras.

TENNESSEE.

William F. Cooper, Bedford M. Estes,
Albert T. McNeal.

VIRGINIA.

William J. Robertson, Robert Ould.

WEST VIRGINIA.

J. B. Jackson, Caleb Boggess.

Mr. Baldwin reported from the Council a list of nominations for officers of the Association.

Mr. Child moved that the meeting proceed to take a single ballot upon all the nominees reported by the Committee.

An amendment was offered, that the report of the Council be accepted, and that the gentlemen nominated be elected.

The amendment was accepted by Mr. Child, and the motion, as amended, was *adopted*.

[The list of officers elected will be found elsewhere.]

The retiring President, Mr. Bristow, appointed Mr. Poland and Mr. Hunt to conduct the newly-elected President of the Association to the chair.

Mr. Bristow then briefly thanked the meeting for the honor he had enjoyed as its presiding officer during the pre-

liminary meeting, and introduced the President of the Association, Mr. Broadhead.

Mr. Broadhead said, on taking the chair, that he deemed it a high honor to be chosen as the presiding officer of a body with so exalted a mission as that of promoting the science of jurisprudence. The purpose of the Association was a noble one, and he believed that it should seek to avoid becoming an agitator of the law, and rather aim to codify and harmonize, than to revolutionize or reform the law. The Association should watch the progress of events as they occur, and be ready to act on all matters of importance when the need arrives. The Association should not be ephemeral, but address itself honestly and earnestly to the great objects properly within its scope. Such an organization is new here, but is not new in other countries. The Order of Advocates is an organization that has stood for centuries in France, and has done much to promote the science of jurisprudence. So this Association, if faithful, may perform a similar work if all address themselves earnestly to the great work before it.

Mr. Amory moved that D. G. Hall, of Nebraska, be added to the Local Council for that State. *Adopted.*

Mr. Poché nominated the following gentlemen from Louisiana, as members of the Association:

B. F. Jonas,
Jno. A. Campbell,
G. A. Breaux,
J. B. Eustis,
R. L. Gibson,
Alfred Grima,
Randall Hunt,
John H. New,
Henry M. Spofford,
Charles E. James,
Henry C. Miller,
Henry Denis,
Edward Bermudy,
John Finney,
Thomas Gillmore,
Francis T. Nichols,
Emile Legender,
J. Richard Winchester,
R. Nicholas Sims,
Edw. W. Pugh,
Andrew S. Herron,
Robt. C. Wickliffe,
Henry Clay Knoblock,
Isaiah D. Moore,
Robert Richardson.

They were elected as members.

The Local Council of Mississippi nominated the following named gentlemen, who were elected:

George A. Evans,	S. S. Calhoun,
W. H. Sims,	Frank Johnston,
Lock E. Houston,	Beverly Mathews,
R. O. Reynolds,	N. E. Harris,
E. O. Sykes,	Upton Young,
W. F. Tucker,	J. Z. George,
Oliver Clifton,	H. H. Chalmers.

The Local Council of Vermont reported the following members of the bar of Vermont as candidates for membership:

James M. Tyler,	Wheelock G. Veazey,
Abraham B. Gardner,	Aldace F. Walker,
John W. Stewart,	Henry C. Belden.
John Prout,	

They were duly elected.

Skipwith Wilmer, of Maryland, was nominated for membership, and elected.

Mr. Phelps moved that the Council be instructed to make nominations for the Executive Committee, and report them to the meeting.

A recess of fifteen minutes was then taken, after which the Council reported the following nominees for members of the Executive Committee:

Simeon E. Baldwin.....Connecticut.
William A. Fisher.....Maryland.
Luke P. Poland.....Vermont.

Upon motion, the report of the Council was accepted, and its nominees were elected.

Mr. Hitchcock, from the Local Council of Missouri, nominated M. Dwight Collier, of St. Louis, as a member, and he was duly elected.

E. C. Sprague, of New York, was, on motion, elected a member of the Local Council of New York.

Mr. Outerbridge moved that a special committee of five be appointed, to consider and report on the subjects of Law Reporting and Law Libraries. After some discussion the motion was *rejected.*

Mr. Hunt offered the following resolution: That the Committee on Legal Education and Admissions to the Bar be instructed to report, at the ensuing annual meeting, some plan for assimilating throughout the Union, the requirements of candidates for admission to the bar, and for regulating, on principles of comity, the standing, throughout the Union, of gentlemen already admitted to practice in their own States.

Mr. Hunt spoke at length upon the subject embraced in the resolution; it was then *adopted.*

Mr. Stockbridge moved that the matter of the incorporation of the American Bar Association be referred to the Executive Committee of the Association, with power to take such action as they may deem desirable.

Mr. Child moved to amend by striking out the words "with power to take such action as they may deem desirable," and inserting the words "which committee shall report thereon at the next meeting."

After a long discussion on the subject, Judge Gresham, of Indiana, moved that the resolution and amendment be laid upon the table. *Adopted.*

Mr. Hitchcock offered the following resolutions:

Resolved, That the Committee on Commercial Law be, and they are hereby, instructed to inquire and report to the Association, at its next annual meeting, upon the present condition of the law, as well statutory as established by judicial decisions, in the several States, touching the form and requis-

ites of negotiable or commercial paper, and the steps requisite on the part of the holder of such paper to fix the liability of parties to such paper, with special reference to the diversity of such requisites in the several States, and that the committee furnish such suggestions as to them may seem fit, as to the propriety and expediency of action on the part of the Association, looking toward further uniformity in the law on that subject.

Resolved, That the Committee on Jurisprudence and Law Reform be, and they are hereby, instructed to inquire and report to the Association, at its next annual meeting, upon the present condition of the law, as well statutory as established by judicial decisions, in the several States, touching the authentication of instruments conveying or affecting real estate, with special reference to the differences in forms of acknowledgment and certification thereof, and with such suggestions as they may deem expedient, looking to greater uniformity therein, and also that said committee make like inquiry and report touching the requisites, under the law of the several States, in respect to the execution of wills.

Resolved, That the Committee on Judicial Administration and Remedial Procedure be, and they are hereby, instructed to inquire and report to the Association, at its next annual meeting, upon the present condition of the law, as well statutory as established by judicial decisions, in the several States, touching the mode of taking testimony and of perpetuating testimony out of court, with special reference to the class of officers authorized to take such testimony, and the power confided to them, and the formalities required for the same; and to make such suggestions on the general subject as to them may seem expedient, with reference to the expediency of any action on the part of this Association in respect to the same.

The resolutions were *adopted*.

Mr. Bullard moved that the Secretary publish 2,000 copies of the Constitution and proceedings of this meeting, with a list of officers and members, and that the same be distributed to the several members of the Council according to their share, estimated by the representation of their respective States in Congress.

Mr. Fisher moved to amend by substituting the following resolution: "That the Secretary is instructed to cause to be printed as many copies as he may deem necessary of the Constitution, proceedings and the names of officers, and to distribute the same among members of the Association and others, at his discretion." The amendment was accepted by Mr. Bullard, and the motion, as amended, was *adopted.*

Mr. Phelps moved that the Executive Committee be requested to provide, by invitation to members, in their discretion, for the reading and delivery before the Association at its future annual meetings, of essays or addresses on subjects connected with the objects of the Association, and that the committee be further requested to make suitable provision for this purpose in the By-Laws. *Adopted.*

Mr. Rogers offered the following resolution:

Resolved, That the Executive Committee be requested to devise and report, at the next annual meeting, measures for establishing close relations between this Association and the Bar Associations of the several States. *Adopted.*

The Local Council of Connecticut reported the following list of nominations for membership from that State:

Charles R. Ingersoll, Francis Wayland,
Henry C. Robinson.

The nominees were elected as members.

Mr. Hitchcock moved a vote of thanks of the Association

to Judge Bockes, for the use of the court-room by the Association. *Adopted.*

On motion, the Association adjourned *sine die.*

FRANCIS RAWLE,
I. GRANT THOMPSON,
Temporary Secretaries.

EDWARD OTIS HINKLEY,
Secretary.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as "The American Bar Association." Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each annual meeting for the year ensuing:—A President, (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State; the Council shall be a Standing Committee on nominations for office; an Executive Committee, to be composed of the Secretary and Treasurer, together with three members of the Council to be chosen by the Association, one of whom shall be chairman of the Committee.

The following Committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

On Jurisprudence and Law Reform;
On Judicial Administration and Remedial Procedure;
On Legal Education and Admissions to the Bar;
On Commercial Law;

On International Law;
On Publications;
On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be *ex officio* chairman of such Council.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the State to the Bar of which the persons nominated belong. In default of such a Council in any State, nominations may be made by the General Council of the Association. All elections shall be by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them, upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association, upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any annual meeting of the Association, by a majority of the members

present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word *State*, wherever used in this Constitution, shall be deemed to be equivalent to *State*, *Territory* and the *District of Columbia*.

OFFICERS

OF

THE AMERICAN BAR ASSOCIATION,

1878-1879.

PRESIDENT.

JAMES O. BROADHEAD, St. Louis, Missouri.

VICE-PRESIDENTS.

Arkansas	George A. Gallagher	Little Rock.
Connecticut	Origen S. Seymour	Litchfield.
Delaware	Anthony Higgins	Wilmington.
Distr. of Columbia	H. H. Wells	Washington.
Florida	Charles W. Jones	Pensacola.
Georgia	Alexander R. Lawton	Savannah.
Illinois	David Davis	Bloomington.
Indiana	Thomas F. Davidson	Covington.
Iowa	William G. Hammond	Iowa City.
Kentucky	Benjamin H. Bristow	Louisville.
Louisiana	Thomas J. Semmes	New Orleans.
Maryland	Richard J. Gittings	Baltimore.
Maine	A. A. Strout	Portland.
Massachusetts	William Gaston	Boston.
Michigan	Thomas M. Cooley	Ann Arbor.
Mississippi	James T. Harrison	Columbus.
Missouri	Henry Hitchcock	St. Louis.
Nebraska	George K. Amory	Lincoln.
New Hampshire	C. W. Stanley	Manchester.
New Jersey	A. Q. Keasbey	Newark.
New York	Clarkson N. Potter	New York.
Ohio	Rufus King	Cincinnati.

Pennsylvania.....GEORGE W. BIDDLE.....Philadelphia.
Rhode Island.....C. C. VAN ZANDT.....Newport.
South Carolina.....HENRY E. YOUNG.....Charleston.
Tennessee.....WILLIAM F. COOPER.....Nashville.
Vermont.....EDWARD J. PHELPS.....Burlington.
Virginia.....J. RANDOLPH TUCKER.....Lexington.
West Virginia.....JOHN A. HUTCHINSON.....Parkersburg.

SECRETARY.

EDWARD O. HINKLEY, 43 North Charles Street, Baltimore.

TREASURER.

FRANCIS RAWLE, 402 Walnut Street, Philadelphia.

COUNCIL.

Arkansas.....U. M. Rose.....Little Rock.
Connecticut.....Simeon E. Baldwin,.....New Haven.
Dist. of Columbia...J. Hubley Ashton.....Washington.
Georgia.....George A. Mercer.....Savannah.
Indiana.....Walter Q. Gresham.....Indianapolis.
Iowa.....John N. Rogers.....Davenport.
Kentucky.....James S. Pirtle.....Louisville.
Louisiana.....Felin P. Poché.....St. James' Parish
Maryland.....William A. Fisher.....Baltimore.
Massachusetts.....Francis W. Hurd.....Boston.
Michigan.....O'Brien J. Atkinson.....Port Huron.
Mississippi.....Joseph E. Leigh.....Columbus.
Missouri.....Philemon Bliss.....Columbia.
Nebraska.....N. C. Abbott.....Lincoln.
New Jersey.....John W. Taylor.....Newark.
New York.....Edward F. Bullard.....Saratoga.
Ohio.....William T. McClintock...Chillicothe.
Pennsylvania.....William H. Armstrong...Williamsport.
Tennessee.....Henry G. Smith.....Memphis.
Vermont.....Luke P. Poland.....St. Johnsbury.
Virginia.....Legh R. Page.....Richmond.

EXECUTIVE COMMITTEE.

Luke P. Poland, *Chairman*.....Vermont.
Simeon E. Baldwin Connecticut.
William A. Fisher.....Maryland.

EX OFFICIO.

Edward O. Hinkley, *Secretary*.....Maryland.
Francis Rawle, *Treasurer*.....Pennsylvania.

LOCAL COUNCILS.

Arkansas.....	James C. Tappan.....	Helena.
	Hermon Carlton.....	Pine Bluff.
Connecticut.....	Asa B. Woodward.....	Norwalk.
	John C. Day.....	Hartford.
Dist. of Columbia...	Richard T. Merrick.....	Washington.
	Walter S. Cox	Washington.
	Nathaniel Wilson.....	Washington.
Georgia	Nathaniel J. Hammond.....	Atlanta.
	L. N. Whittle.....	Macon.
Illinois.....	O. H. Browning.....	Quincy.
	Lyman Trumbull.....	Chicago.
	Gustave Koerner.....	Belleville.
Indiana.....	A. W. Hendricks.....	Indianapolis.
	Asa Iglehart	Evansville.
	Robert S. Taylor.....	Fort Wayne.
Iowa.....	George G. Wright.....	Des Moines.
	Oliver P. Shiras	Dubuque.
Kentucky.....	John W. Stevenson.....	Covington.
	James B. Beck.....	Lexington.
Louisiana.....	Carleton Hunt	New Orleans.
	Thomas L. Bayne.....	New Orleans.

Maine	F. A. Wilson	Bangor.
	William P. Frye	Lewiston.
Maryland	A. Leo Knott	Baltimore.
	William J. Ross	Frederick City
	A. B. Hagner	Annapolis.
Massachusetts	Charles R. Train	Boston.
	Edmund H. Bennett	Taunton.
	George W. Baldwin	Boston.
Michigan	Archibald McDowell	Bay City.
	John Atkinson	Detroit.
	Edwin Willetts	Monroe.
Mississippi	R. O. Reynolds	Aberdeen.
	Frank Johnston	Jackson.
	T. C. Catchings	Vicksburg.
Missouri	John B. Henderson	St. Louis.
	Albert Todd	St. Louis.
Nebraska	S. H. Calhoun	Nebraska City.
	Charles F. Manderson	Omaha.
	D. G. Hall,	Lincoln.
New Hampshire	Gilman Marston	Exeter.
	Ossian Ray	Lancaster.
New Jersey	Abraham Q. Garretson	Jersey City.
	Garret D. W. Vroom	Trenton.
	William E. Potter	Bridgeton.
New York	John Winslow	Brooklyn.
	Wm. Allen Butler	New York.
	Matthew Hale	Albany.
	William C. Ruger	Syracuse.
	E. C. Sprague	Buffalo.
Ohio	George Hoadly	Cincinnati.
	Calvin S. Brice	Lima.
Pennsylvania	Thomas E. Franklin	Lancaster.
	Albert A. Outerbridge	Philadelphia.
	Henry Green	Easton.
	George Shiras	Pittsburg.

Tennessee.....	Bedford M. Estes	Memphis.
	Albert T. McNeal	Bolivar.
Vermont.....	Charles N. Davenport.....	Brattleboro.
	Guy C. Noble.....	St. Albans.
Virginia	William J. Robertson.....	Charlottesville.
	Robert Ould.....	Richmond.
	John W. Daniel.....	Lynchburg.
West Virginia.....	J. B. Jackson.....	Parkersburg.
	Caleb Boggess.....	Clarksburg.

COMMITTEES

FOR THE YEAR 1878-1879.

ON JURISPRUDENCE AND LAW REFORM.

Wm. Allen Butler New York, N. Y.
Simeon E. Baldwin New Haven, Conn.
Edward L. Pierce Boston, Mass.
Thomas J. Semmes New Orleans, La.
Henry Hitchcock St. Louis, Mo.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

Gustavus A. Somerby Boston, Mass.
Rufus King Cincinnati, O.
George W. Biddle Philadelphia, Pa.
E. C. Sprague Buffalo, N. Y.
Walter Q. Gresham Indianapolis, Ind.

ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR.

Carleton Hunt New Orleans, La.
Henry Stockbridge Baltimore, Md.
U. M. Rose Little Rock, Ark.
George Hoadly Cincinnati, O.
Edmund H. Bennett Taunton, Mass.

ON COMMERCIAL LAW.

Wm. Walter Phelps.....New York, N. Y.
George A. Mercer.....Savannah, Ga.
James T. Mitchell Philadelphia, Pa.
Julian J. Alexander.....Baltimore, Md.
Lyman Trumbull Chicago, Ill.

ON INTERNATIONAL LAW.

William M. Evarts New York, N. Y.
Thomas M. Cooley.....Ann Arbor, Mich.
William Gaston.....Boston, Mass.
John W. Stevenson.....Covington, Ky.
Legh R. Page.....Richmond, Va.

ON PUBLICATION.

Edward J. Phelps.....Burlington, Vt.
John C. Day.....Hartford, Conn.
Francis Rawle Philadelphia, Pa.
A. Q. Keasbey.....Newark, N. J.
Gilman Marston.....Exeter, N. H.

ON GRIEVANCES.

Henry G. Smith.....Memphis, Tenn.
J. Randolph Tucker.....Lexington, Va.
Richard T. Merrick.....Washington, D. C.
John N. Rogers Davenport, Iowa.
James S. Pirtle.....Louisville, Ky.

MEMBERS.

August, 1878.

ARKANSAS.

Carlton, Hermon	Pine Bluff.
Gallagher, George A.	Little Rock.
Rose, U. M.	Little Rock.
Tappan, James C.	Helena.

CONNECTICUT.

Andrews, Charles B.	Litchfield.
Averill, Roger	Danbury.
Baldwin, Simeon E.	New Haven.
Brewster, Lyman D.	Danbury.
Child, Calvin G.	Stamford.
Day, John C.	Hartford.
Hamersley, Wm.	Hartford.
Hubbard, Richard D.	Hartford.
Ingersoll, Charles R.	New Haven.
Kingsbury, Frederick T.	Waterbury,
McCurdy, Charles J.	Lyme.
Pardee, Henry E.	New Haven.
Platt, Johnson T.	New Haven.
Robinson, Henry C.	Hartford.
Russell, Talcott H.	New Haven.
Seymour, Origen S.	Litchfield.
Wayland, Francis,	New Haven.
Willcox, W. F.	Deep River.
Woodruff, George M.	Litchfield.
Woodward, Asa B.	Norwalk.

DELAWARE.

Higgins, Anthony	Wilmington.

DISTRICT OF COLUMBIA.

Ashton, J. Hubley,	Washington.
Cox, Walter S.	Washington.
Meloy, William A.	Washington.
Merrick, Richard T.	Washington.
Wells, H. H.	Washington.
Wilson, Nathaniel	Washington.

FLORIDA.

Jones, Charles W.	Pensacola.

GEORGIA.

Hammond, N. J.	Atlanta.
Hook, James J.	Atlanta.
Lawton, Alexander R.	Savannah.
Mercer, George A.	Savannah.
Whittle, L. N.	Macon.

ILLINOIS.

Browning, O. H.	Quincy.
Davis, David	Bloomington.
Koerner, Gustave,	Belleville.
Mason, Edward G.	Chicago.
Trumbull, Lyman	Chicago.

INDIANA.

Bicknell, George A.	New Albany.
Davidson, Thomas F.	Covington.
Durbin, Greene	Versailles.
Fairbanks, Charles W.	Indianapolis.
Fishback, W. P.	Indianapolis.
Frazer, James S.	Warsaw.
Gresham, Walter Q.	Indianapolis.
Hendricks, A. W.	Indianapolis.
Iglehart, Asa,	Evansville.
Lowry, R.	Fort Wayne.
Taylor, R. S.	Fort Wayne.

IOWA.

Hammond, William G.	Iowa City.
Rogers, John N.	Davenport.
Shiras, Oliver P.	Dubuque.
Wright, George G.	Des Moines.

KENTUCKY.

Beck, James B.	Lexington.
Bristow, B. H.	Louisville.
Pirtle, James S.	Louisville.
Rucker, Henry	Paris.
Stevenson, John W.	Covington.
Willson, A. E.	Louisville.

LOUISIANA.

Acklen, Joseph H.	Pattersonville.
Bayne, Thomas L.	New Orleans.
Bermudy, Edward	New Orleans.
Breaux, G. A.	New Orleans.
Campbell, John A.	New Orleans.
Clark, Thomas Allen,	New Orleans.
Denis, Henry	New Orleans.
Eustis, J. B.	New Orleans.
Finney, John	New Orleans.
Gibson, R. L.	New Orleans.
Gillmore, Thomas	New Orleans.
Grima, Alfred	New Orleans.
Herron, Andrew S.	Baton Rouge.
Hunt, Carleton	New Orleans.
Hunt, Randall,	New Orleans.
James, Charles E.	New Orleans.
Jonas, B. F.	New Orleans.
Knoblock, Henry Clay	Lafourche.
Legendre, Emile	St. James.
Merrick, Edwin T.	New Orleans.
Miller, Henry C.	New Orleans.

Moore, Isaiah D.	Lafourche.
Nichols, Francis T.	New Orleans.
New, John H.	New Orleans.
Pochè, Felin P.	St. James.
Pugh, Edward W.	Ascension.
Race, George W.	New Orleans.
Richardson, Robert	Monroe.
Semmes, Thomas J.	New Orleans.
Sims, R. Nicholas	Ascension.
Spofford, Henry M.	New Orleans.
Winchester, J. Richard	St. James.
Wickliffe, Robert C.	Bayou Sara.

MAINE.

Frye, Wm. P.	Lewiston.
Strout, A. A.	Portland.
Wilson, F. A.	Bangor.

MARYLAND.

Alexander, Julian J.	Baltimore.
Beasten, Charles, Jr.	Baltimore.
Bonaparte, Charles J.	Baltimore.
Fisher, Wm. A.	Baltimore.
Gittings, Richard J.	Baltimore.
Hagner, A. B.	Annapolis.
Hinkley, Edw. Otis	Baltimore.
Knott, A Leo	Baltimore.
Latrobe, John H. B.	Baltimore.
Marshall, Charles	Baltimore.
Mathews, R. Stockett	Baltimore.
McIntosh, David G.	Towsontown.
Ross, Wm. J.	Frederick City.
Sharp, Geo. M.	Baltimore.
Stockbridge, Henry	Baltimore.
Venable, Richard M.	Baltimore.
Wilmer, Skipwith,	Baltimore.

MASSACHUSETTS.

Baldwin, G. W.	Boston.
Bell, C. V.	Lawrence.
Bennett, Edmund H.	Taunton.
Bond, D. W.	Northampton.
Gaston, Wm.	Boston.
Goodwin, Frank	Boston.
Hemenway, Alfred	Boston.
Hurd, Francis W.	Boston.
Jones, Leonard	Boston.
Knowlton, M. P.	Springfield.
Lamb, S. O.	Greenfield.
Muzzey, Henry W.	Boston.
Pierce, Edward L.	Boston.
Ranney, A. A.	Boston.
Richardson, Daniel A.	Lowell.
Scudder, H. A.	Boston.
Swift, M. G. B.	Fall River.
Somerby, Gustavus A.	Boston.
Thayer, James B.	Cambridge.
Train, Charles R.	Boston.

MICHIGAN.

Atkinson, John	Detroit.
Atkinson, O. J.	Port Haven.
Cooley, Thos. M.	Ann Arbor.
McDowell, Archibald,	Bay City.
Willetts, Edwin,	Monroe.

MISSISSIPPI.

Calhoun, S. S.	Canton.
Catchings, T. C.	Vicksburg.
Chalmers, H. H.	Panola.
Clifton, Oliver	Jackson.
Evans, George A.	Columbus.
George, J. Z.	Jackson.

Harris, N. E.	Vicksburg.
Harrison, James T.	Columbus.
Houston, Lock E.	Aberdeen.
Johnston, Frank,	Canton.
Leigh, Jos. E.	Columbus.
Mathews, Beverly,	Columbus.
Reynolds, R. O.	Aberdeen.
Sims, W. H.	Columbus.
Sykes, E. O.	Aberdeen.
Tucker, W. F.	Oaktown.
Young, Upton	Vicksburg.

MISSOURI.

Bailey, Geo. W.	St. Louis.
Bliss, P.	Columbia.
Broadhead, Jas. O.	St. Louis.
Collier, M. Dwight,	St. Louis.
Comingo, A.	Independence.
Henderson, J. B.	St. Louis.
Hitchcock, Henry	St. Louis.
Kehr, Edward C.	St. Louis.
Krum, John M.	St. Louis.
Orrick, John C.	St. Louis.
Todd, Albert	St. Louis.
Wade, Wm. P.	St. Louis.
Withrow, James E.	St. Louis.

NEBRASKA.

Abbott, N. C.	Lincoln.
Amory, Geo. K.	Lincoln.
Calhoun, S. H.	Nebraska City.
Galey, S. B.	
Hall, D. G.	Lincoln.
Laird, James	Lincoln.
Manderson, Charles F.	Omaha.
Marquett, T. M.	
Pound, S. B.	

NEW HAMPSHIRE.

Eastman, Samuel C.	Concord.
Hatch, A. H.	Portsmouth.
Marston, Gilman,	Exeter.
Ray, Ossian	Lancaster.
Stanley, C. W.	Manchester.

NEW JERSEY.

Abeel, Gustavus N.	Newark.
Borcherling, Chas.	Newark.
Garretson, A. Q.	Jersey City.
Keasbey, A. Q.	Newark.
McCarter, Ludlow,	Newark.
Potter, William E.	Bridgeton.
Taylor, John W.	Newark.
Vroom, Garret D. W.	Trenton.

NEW YORK.

Blake, Chas. F.	New York.
Bullard, E. F.	Saratoga Sp.
Burchard, Nathan	Brooklyn.
Burnett, Henry L.	New York.
Butler, Wm. Allen	New York.
Durfee, H. R.	Palmyra.
Eaton, Dorman B.	New York.
Eaton, Sherburne B.	New York.
Emott, James	New York.
Evarts, Wm. M.	New York.
Forster, Geo. H.	New York.
Frost, Calvin	Peekskill.
Hale, Matthew	Albany.
Lyon, W. A.	New York.
Mathews, Albert	New York.
Mitchell, Edward,	New York.
Nelson, Homer A.	Poughkeepsie.

Perkins, J. B.	Rochester.
Phelps, Wm. Walter,	New York.
Pond, A.	Saratoga Sp.
Porter, John K.	New York.
Potter, Clarkson N.	New York.
Richardson, Chas. A.	Canandaigua.
Ruger, Wm. C.	Syracuse.
Sayres, Gilbert	Brooklyn.
Shepard, Elliott F.	New York.
Smith, Henry	Albany.
Sprague, E. C.	Buffalo.
Sullivan, Algernon S.	New York.
Thompson, Isaac Grant	Troy.
Willis, Benj. A.	New York.
Winslow, John	New York.

OHIO.

Baldwin, Chas. C.	Cleveland.
Brice, C. S.	Lima.
DeWitt, E. L.	Columbus.
Evans, N. W.	Portsmouth.
Hackedorn, W. E.	Lima.
Hoadly, Geo.	Cincinnati.
Irvine, James	Lima.
Johnson, Edgar M.	Cincinnati.
King, Rufus	Cincinnati.
Mathews, Stanley	Cincinnati.
McClintock, Wm. T.	Chillicothe.
Meek, Basil	Clyde.
Merrill, N.	Wauseon.
Morris, S. W.	Ironton.
Shaw, R. K.	Marietta.
Young, W. D.	Ripley.

PENNSYLVANIA.

Armstrong, Wm. H.	Williamsport.
Biddle, Geo. W.	Philadelphia.
Brewster, Benj. H.	Philadelphia.
Bridges, S. A.	Allentown.
Dallas, George M.	Philadelphia.
Franklin, Thos. E.	Lancaster.
Green, Henry	Easton.
McMurtrie, Richard C.	Philadelphia.
Mitchell, Jas. T.	Philadelphia.
Outerbridge, Albert A.	Philadelphia.
Perkins, Samuel C.	Philadelphia.
Rawle, Francis	Philadelphia.
Shiras, George	Pittsburgh.
Shoemaker, L. D.	Wilkesbarre.

RHODE ISLAND.

Van Zandt, C. C.	Newport.

SOUTH CAROLINA.

Young, Henry E.	Charleston.

TENNESSEE.

Cooper, Wm. F.	Nashville.
Estes, Bedford M.	Memphis.
McNeal, Albert T.	Bolivar.
Smith, Henry G.	Memphis.

VERMONT.

Belden, Henry C.	St. Johnsbury.
Bromley, J. B.	Castleton.
Davenport, Chas. N.	Brattleboro.
Gardner, Abraham B.	Bennington.
Hinckley, Lyman G.	Chelsea.
Johnson, Wm. E.	Woodstock.
Noble, Guy C.	St. Albans.
Paul, Norman	Woodstock.

Phelps, E. J.	Burlington.
Poland, Luke P.	St. Johnsbury.
Prout, John	Rutland.
Stevens, Hiram F.	St. Albans.
Stewart, John W.	Middlebury.
Tyler, James M.	Brattleboro.
Veazey, Wheelock G.	Rutland.
Walker, Aldace F.	Rutland.

VIRGINIA.

Daniel, J. W.	Lynchburg.
Hamilton, Alex.	Petersburg.
Ould, Robert	Richmond.
Page, Legh R.	Richmond.
Payne, Wm. H.	Warrentown.
Robertson, Wm. J.	Charlottesville.
Stiles, Robert	Richmond.
Tucker, J. Randolph	Lexington.
Walton, Moses	Woodstock.

WEST VIRGINIA.

Boggess, Caleb	Clarksburg.
Hutchinson, John A.	Parkersburg.
Jackson, J. B.	Parkersburg.

REPORT

OF THE

SECOND ANNUAL MEETING

OF

THE AMERICAN

BAR ASSOCIATION,

Held at Saratoga Springs, New York, August 20th and 21st, 1879.

PHILADELPHIA:
E. C. MARKLEY & SON, No. 422 LIBRARY STREET.
1879.

REPORT

OF THE

SECOND ANNUAL MEETING

OF

THE AMERICAN

BAR ASSOCIATION,

Held at Saratoga Springs, New York, August 20th and 21st, 1879.

PHILADELPHIA:
E. C. MARKLEY & SON, No. 422 LIBRARY STREET.
1879.

CONTENTS.

	PAGE.
Proceedings of the Meeting,	5
Constitution,	20
By-Laws,	24
Officers,	27
Committees,	32
Members,	34
President's Address,	51
Paper by Calvin G. Child,	71
Paper by Henry Hitchcock,	93
Paper by George A. Mercer,	143
Address of E. J. Phelps,	173
Report of Committee on Jurisprudence &c.,	193
Report of Committee on Legal Education &c.,	209
Treasurer's Report,	237

PROCEEDINGS OF THE SECOND ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD IN THE

Town Hall, Saratoga, N. Y., August 20th and 21st, 1879.

1. L. P. POLAND, Chairman of the Executive Committee, called the meeting to order about eleven o'clock A. M., on the twentieth of August, and introduced JAMES O. BROADHEAD, the President of the Association, who delivered the opening address. (*See Appendix.*)

2. The Association then proceeded to the election of members, and the following were duly elected, viz.:

ARKANSAS.

JOHN J. HORNER, P. O. THWEATT,
J. M. MOORE.

CONNECTICUT.

LOREN P. WALDO, EDWARD W. SEYMOUR,
LAFAYETTE S. FOSTER, HORACE CORNWALL,
WILLIAM T. MINOR, ALVAN P. HYDE,
JULIUS B. CURTIS, GILBERT W. PHILIPS,
SHERMAN W. ADAMS.

DISTRICT OF COLUMBIA.

A. PORTER MORSE.

GEORGIA.

R. F. LYON, WALTER S. CHISHOLM,
FRANK H. MILLER, R. N. ELY,
HENRY JACKSON.

ILLINOIS.—THOMAS HOYNE.

INDIANA.

THOMAS A. HENDRICKS,
JOSEPH E. MCDONALD,
JOHN M. BUTLER,
BENJAMIN HARRISON,
WM. H. H. MILLER,
C. C. HINES,
OSCAR B. HORD,
NAPOLEON B. TAYLOR,
F. RAND,
EDWIN TAYLOR,
F. WINTER,
JOHN M. WILSON,
RALPH HILL,
DAVID TURPIE,
ALBERT G. PORTER,
A. C. HARRIS,
C. A. KORBLY,
S. STANSIFER,
JAMES J. BEST,
ALLEN ZOLLARS,
R. S. ROBERTSON,
AZRO DYER,
JOSEPH A. S. MITCHELL.

KENTUCKY.

WILLIAM PRESTON,
ALFRED T. POPE,
M. M. BENTON,
J. Z. MOORE,
JAMES O'HARA,
JOHN MASON BROWN,
MALCOLM YEAMAN,
JOHN W. FEIGHAN.

LOUISIANA.

J. L. GAUDET,
JAMES MCCONNELL,
VICTOR OLIVIER.

MAINE.

NATHAN WEBB,
WM. L. PUTNAM,
NATHAN CLEAVES,
GEO. F. HOLMES,
JOSIAH H. DRUMMOND,
JAMES D. FESSENDEN,
A. P. GOULD,
ORVILLE D. BAKER.

MARYLAND.

JAMES B. GROOME,
THALES S. LINTHICUM,
JOSEPH KENT ROBERTS, JR.,
ROBERT R. BOARMAN.

MASSACHUSETTS.

GEORGE MARSTON,
WILLIAM H. CRAPO,
THOMAS M. STETSON,
CHARLES W. CLIFFORD,
WILLIAM H. FOX,
JAMES M. MORTON,
B. W. HARRIS,
A. G. BULLOCK.

MISSOURI.—JOSEPH SHIPPEN.

NEW HAMPSHIRE.

HARRY BINGHAM,
GEORGE A. BINGHAM,
JOHN M. SHIRLEY,
A. P. CARPENTER,
WILLIAM S. LADD,
ALBERT S. WAIT,
JEREMIAH SMITH,
IRVING W. DREW,
JOSEPH W. FELLOWS,
E. B. S. SANBORN.

NEW JERSEY.

CORTLANDT PARKER,
FREDK. H. TEESE,
THOMAS N. MCCARTER,
JAMES OLIVER CLARK,
WILLIAM R. WEEKS,
L. SPENCER GOBLE,
THOMAS T. KINNEY,
JACOB WEART,
HENRY S. WHITE,
JOSEPH D. BEDLE,
WASHINGTON B. WILLIAMS,
ALEXANDER T. MCGILL, JR.,
JAMES B. VREDENBURGH,
BARKER GUMMERE,
HENRY S. LITTLE,
S. MEREDITH DICKINSON,
ROBERT S. WOODRUFF, JR.

NEW YORK.

AUGUSTUS SCHOONMAKER,
GEORGE F. COMSTOCK,
E. W. STOUGHTON,
HENRY J. SCUDDER,
JOHN E. WARD,
WILLIAM C. WHITNEY,
JOHN E. BURRILL,
BENJAMIN D. SILLIMAN,
CLIFFORD A. HAND,
A J. VANDERPOEL,
STEPHEN P. NASH,
JOSHUA M. VANCOTT,
SIMON STERNE,
ROBERT D. BENEDICT,
JOHN N. WHITING,
ELBRIDGE T. GERRY,
W. W. MCFARLAND,
JAMES P. LOWREY,
PETER B. OLNEY,
ANDREW BOARDMAN,
PLATT POTTER,
SAML. W. JACKSON,
JUDSON F. LANDON,
W. B. FRENCH,
ASHLEY D. L. BAKER,
HORACE E. SMITH,
JAMES M. DUDLEY,
SHERMAN E. ROGERS,
GEORGE B. HIBBARD,
E. RANDOLPH ROBINSON,
RALPH E. PRIME,
EDGAR F. CULLEN,
LUTHER R. MARSH.

OHIO.

HENRY STANBERRY,
RUFUS P. RANNEY,
SENECA O. GRISWOLD,
RICHARD A. HARRISON,
HENRY C. NOBLE,
CHARLES H. SCRIBNER,
ALPHONSO TAFT,
JAMES MASON,
ROBT. A. JOHNSON,
HENRY F. PAGE,
MILLS GARDNER,
S. C. CRAIGHEAD,
JOHN A. MCMAHON,
GEORGE W. HOUCK,
OSCAR F. MOORE,
W. A. HUTCHINS,
W. A. DOUGHERTY,
JOHN J. BRAZEE,
CHARLES MARTIN,
WM. W. JOHNSON,
M. M. GRANGER,
W. T. PORTER,
EDWARD COLSTON.

PENNSYLVANIA.

WM. HENRY RAWLE,
GEORGE T. BISPHAM,
J. SERGEANT PRICE,
CHARLES H. PENNYPACKER,
HENRY W. PALMER,
NATHANIEL ELLMAKER,
HUGH M. NORTH,
ISAAC S. SHARP,
ANDREW G. CURTIN,
MALCOLM HAY,
WM. D. LUCKENBACH,
A. R. BRUNDAGE,
RICHARD VAUX,
STANLEY WOODWARD,
ROBERT E. MONAGHAN,
JOSEPH J. LEWIS,
WM. B. WADDELL,
JOSEPH HEMPHILL,
E. B. STURGES,
WM. E. LITTLE,
W. N. SEIBERT.

SOUTH CAROLINA.

J. W. BACOT,
JOSEPH W. BARNWELL,
W. H. BRAISLEY,
B. R. BURNETT,
THEODORE G. BARKER,
JAMES B. CAMPBELL,
WILMOT G. DESAUSSURE,
W. ST. JULIEN JEWETT,
EDWARD MCCRADY, JR.,
A. G. MAGRATH,
JULIAN MITCHELL,
C H. SIMONTON,
HENRY A. M. SMITH,
AUGUSTINE T. SMYTHE,
G. R. WALKER.

VERMONT.

H. H. POWERS,
W. C. DUNTON,
W. C. FRENCH,
W. H. WALKER,
W. G. SHAW,
E. H. POWELL,
W. L. BURNAP,
W. D. CRANE.

3. Anthony L. Knapp, of Springfield, Illinois, presented credentials as a delegate to this Association from the Illinois State Bar Association.

4. Azro Dyer and Joseph A. S. Mitchell, new members from Indiana, were also delegates from the Indiana State Bar Association.

Charles F. Manderson appeared as a delegate from the State Bar Association of Nebraska.

5. The Secretary, Edward Otis Hinkley, then presented his Report, as follows:

The proceedings of the last meeting have been printed, with the Constitution and a list of members and of officers appended. By-Laws have been adopted by the Executive Committee, and have also been printed; likewise a circular notice of this second annual meeting, all which papers have been distributed among members.

The list of members contains 289 names, and 201 having been elected at this meeting, the whole number of members would be 490; there are, however, a few deaths and resignations, the exact number of which cannot now be stated. The Secretary has had occasion to correspond with a large number of persons, notifying officers and others, and has endeavored to fulfil the duties of his office.

6. The Treasurer presented his Report, which was read and accepted. (*See Appendix.*)

7. The Chairman of the Executive Committee, Judge Poland, reported that some changes had been made by the Committee in the By-Laws since they were printed, as follows:

In the order of exercises, after 2 (b), the following words are inserted, viz.: "*Election of the Council.*"

This change was made in order that the Council might be appointed as early as possible, because it is their duty to nominate all the officers of the Association, and for the same reason another change was made, thus:

To the 6th By-Law, the following words are appended, viz.: "*Except the Council, whose term of office shall commence immediately upon their election.*"

In the 7th By-Law, after the word Committees, insert the words, "*except the Committee on Publications,*" and at the end append the words, "*The Committee on Publications shall be appointed on the first day of each meeting.*"

A 12th By-Law has been added, as follows:

"*At any of the meetings of the Association, members of the bar of any foreign country, or of any state who are not members of this Association, may be admitted to the privileges of the floor during such meeting.*"

This Committee was requested, by a vote of the Association at its first annual meeting, to devise and report to this meeting measures for establishing close relations between this Association and the bar associations of the several states.

Your Committee, on consideration of the subject, were of opinion that one suitable measure for the purpose would be, to allow each state bar association to be represented at all meetings of this Association by delegates, with the privileges of membership. A By-Law to this effect was, therefore, framed, and is the fourth of those adopted by the Committee, which have been submitted to you in print.

We have also thought it would be advisable to forward copies of the proceedings and publications of this Association to the Secretary of each state bar association, and, unless otherwise directed, will see that this is hereafter done.

I have been also directed by the Committee to propose an amendment to the Constitution, a matter, perhaps, not strictly

within the duty of the Executive Committee. It may be advisable that the Executive Committee should be more permanent, and it was not apparent to us that there was any special importance in having the Executive Committee made up in any part of members of the Council, and we therefore submit this proposition to the Association:

To amend Article III. of the Constitution, by striking out the words in the 9th line, viz.: "*of the Council,*" and I make a motion to that effect.

The motion was seconded by Rufus King, and the amendment was unanimously adopted, there being more than thirty members present.

8. Judge Poland then said:

One of the By-Laws that have been adopted by the Executive Committee and reported, provides for inviting any member of the bar of any foreign country, and, consistently with that provision, I move that Robert F. Hall, a member of the bar of the Province of Quebec, and President of the Bar Association of the District of St. Francis, in which he lives, be invited to a seat upon the floor, and to participate in these proceedings.

The motion was adopted, and Mr. Hall being present accepted the invitation.

9. The President then appointed the Committee on Publications. (*See List of Committees appended.*)

10. On motion of Mr. Baldwin, it was resolved, that the first business at the evening session should be the election of the Council.

11. The President then introduced Calvin G. Child, of Connecticut, who read a paper on "SHIFTING USES, FROM THE "STANDPOINT OF THE NINETEENTH CENTURY."

12. On motion of Judge Poland, the meeting was adjourned at forty-five minutes after one o'clock, until seven P. M.

EVENING SESSION.

13. The meeting having been called to order by the President,

Judge Poland said:

Agreeably to the motion made this forenoon, I now move that we proceed with the first business, and that the states be called in their order for nominations, from the several states, for members of the Council. The motion was adopted, and the members of the Council were elected. (*See List of Officers appended.*)

14. The President then introduced Henry Hitchcock, of Missouri, who read a paper on "THE INVIOLABILITY OF TELE-" GRAMS."

15. The President then introduced George A. Mercer, of Georgia, who read a paper on "THE RELATIONSHIP OF LAW " AND NATIONAL SPIRIT."

16. Judge Poland moved the following amendment to the Constitution, which was unanimously adopted, there being more than thirty members present:

Amend the first clause of Article IV. of the Constitution, so that it shall read as follows:

"All nominations for membership shall be made by the Local " Council of the state to the bar of which the persons nomi-" nated belong. Such nominations must be transmitted, in " writing, to the Chairman of the General Council, and ap-" proved by the Council, on vote by ballot.

"The General Council may also nominate members from "states having no Local Council.

"All nominations thus made, or approved, shall be reported "by the Council to the Association, and all whose names are "reported shall thereupon become members of the Association; "*Provided*, That if any member demands a vote upon any name "thus reported, the Association shall thereupon vote thereon "by ballot."

The Association then adjourned until 10 A. M., on Thursday.

Thursday, August 21, 1879, 10 A. M.

17. The President called the meeting to order, and introduced Edward J. Phelps, of Vermont, who delivered the *Annual Address.* (*See Appendix.*)

18. William Allen Butler, of New York, Chairman of the Committee on Jurisprudence and Law Reform, read the Report of that Committee (*See Appendix*), which was received, and the Resolution thereto appended was adopted, as follows:

Resolved, That in the judgment of the Association, it is greatly to be desired that action be taken by the several states, by proper and concurrent legislation, to secure uniformity in the acknowledgment and authentication of deeds, and other instruments affecting real estate, and in the mode of executing and attesting wills, and to this end the several Local Councils of the Association are hereby directed to coöperate with the Committee on Jurisprudence and Law Reform, as the Committee may request and indicate, in the preparation of forms of acknowledgment, proof and authentication of such instruments and of regulations as to the execution and attestation of wills, with a view to securing such uniformity; the same to be reported by the Committee to the Association at its next annual meeting.

19. Rufus King, of Ohio, Chairman of the Committee on Judicial Administration and Remedial Procedure, asked the indulgence of the Association for one year, this course being rendered necessary by the death of Mr. Somerby, the Chairman of that Committee; the indulgence was thereupon granted.

20. Carleton Hunt, of Louisiana, Chairman of the Committee on Legal Education and Admissions to the Bar, then read the report of that Committee (*See Appendix*), which was received.

To this report were appended certain *Resolutions*, the adoption of which the Committee recommended, viz.:

Resolved (1), That the several state and local bar associations in the United States be respectfully requested to recommend and further the enactment of laws for assimilating throughout the union, on principles of comity, the standing of members of the bar, already admitted to practice in their own states, by admitting to equal rights and privileges, as practitioners of law in the courts of all the other states, those who have practiced for three years in the highest court of the state of which they are citizens.

Resolved (2), That the several state and other local bar associations be respectfully requested to recommend and further in their respective states, the maintenance, by public authority, of schools of law, provided with faculties of at least four well paid and efficient teachers, and whose diploma shall, upon being unanimously granted, after a full and fair written examination, be essential as a qualification for practicing law.

Resolved (3), That the said state and other local bar associations be respectfully requested to recommend and further in such law schools a general course of instruction, to be duly divided, for ordinary purposes, into studies and exercises of the first year, of the second year, and of the third year, including at least the following studies:

I. Moral and Political Philosophy.

II. The Elementary and Constitutional Principles of the Municipal Law of England, and herein,—

1st, Of the Feudal Law;

2d, The Institutes of the Municipal Law generally;

3d, The Origin and Progress of the Common Law.

III. The Law of Real Rights and Real Remedies.

IV. The Law of Personal Rights and Personal Remedies.

V. The Law of Equity.

VI. The Lex Mercatoria.

VII. The Law of Crimes and their Punishments.

VIII. The Law of Nations.

IX. The Maritime and Admiralty Law.

X. The Civil or Roman Law.

XI. The Constitution and Laws of the United States of America, and herein of the Jurisdiction and Practice of the Courts of the United States.

XII. Comparative Jurisprudence, and the Constitutions and Laws of the several States of the Union.

XIII. Political Economy.

Resolved (4), That the said state and other local bar associations be respectfully requested to recommend and further in such law schools, the requirement of attendance on at least the studies and exercises appointed for said course of three years, as a qualification for examination to be admitted to the bar.

The Resolutions were laid on the table, for the purpose of considering other matters.

21. Judge Poland presented the nominations by the Council, of Officers of the Association for the ensuing year.

22. The Council also nominated certain new members of the Association, and there being no objection to any one of them, they accordingly were duly elected, viz.:

ALABAMA.

ALPHEUS BAKER, EDMUND W. PETERS,
WALTER S. BRAGG, D. S. TROY,
DAVID CLOPTON, THOMAS H. WATTS.

CALIFORNIA.—JOHN N. POMEROY.

DISTRICT OF COLUMBIA.—M. F. MORRIS.

INDIANA.—W. C. WILSON.

KANSAS.—JOHN GUTHRIE.

MAINE.

LEWIS BAKER, CHARLES P. STETSON.

MARYLAND.

JOHN HENRY KEENE, ROBERT G. KEENE.

MASSACHUSETTS.—NATHANIEL W. LADD.

NEBRASKA.—J. M. WOOLWORTH.

RHODE ISLAND.

CHARLES S. BRADLEY, BENJAMIN F. THURSTON,
WILLIAM P. SHEFFIELD.

VERMONT.

DANIEL ROBERTS, B. B. SMALLEY,
H. H. WHEELER.

23. On motion of Mr. Baldwin, the following resolutions were adopted:

Resolved (1), That before the opening of each term of the Supreme Court of the United States, a Docket should be prepared by the clerk, at the public expense, and mailed to every lawyer who appears as attorney of record in any of the cases pending; such Docket to contain, not only the name and number of each case, with the names of the counsel, but also a brief minute of any interlocutory orders made, or pleas or motions filed therein.

Resolved (2), That the Committee on Judicial Administration and Remedial Procedure, and the Local Council for the District of Columbia, be a Joint Special Committee to procure the necessary legislation or orders to attain the object specified in the foregoing resolution.

24. On motion of Mr. Butler, the following resolution was adopted:

Resolved, That the thanks of the Association are hereby tendered to Messrs. Calvin G. Child, Henry Hitchcock, and George A. Mercer, for the able and interesting papers read by them; and to Mr. Edward J. Phelps, for his admirable address, delivered before the Association.

25. The officers nominated by the General Council were then all duly elected. (*See Appendix.*)

26. The following gentlemen of the State of New York were duly elected members of the Association:

CHARLES S BEAMAN,	AMASA J. PARKER,
WILLIAM FULLERTON,	WHEELER H. PECKHAM,
ROBERT HALE,	ALBERT STICKNEY,
SAMUEL HAND,	JOHN THOMPSON,
JOHN T. HOFFMAN,	MARTIN I. TOWNSEND,
FRANCIS KERNAN,	E. S VAN WINKLE,
DELANCEY NICOLL,	HENRY WHEATON,

EVERETT P. WHEELER.

27. Mr. Hunt, of Louisiana, moved that the thanks of this Association be tendered to the President, Executive Committee, Secretary, Treasurer, and all the officers of the Association, for the public spirit with which they have brought about and conducted this meeting, for which the Association have reason to feel obliged.

Mr. Bristow, the President elect, put the motion, and it was unanimously adopted.

28. On motion of Mr. King, of Ohio,—

Resolved, That the Committee on Jurisprudence and Law Reform be requested to report at the next annual meeting of the Association, a synopsis of the laws of marriage and divorce in all the states and territories and District of Columbia, with such recommendations as they deem expedient for bringing about more uniformity in such legislation; and that they be authorized to employ such clerical assistance as may be necessary in this as well as the subject heretofore referred to them.

29. Mr. Hunt, Chairman of the Committee on Legal Education and Admissions to the Bar, moved that the report of that Committee be taken from the table, and that it be made the special order for the ensuing session.

Mr. Hitchcock, of Missouri, proposed as an amendment, that the Executive Committee provide a suitable place in the order of exercise for the discussion of the subject at the next session of the Association. The amendment was accepted and the motion was adopted.

30. Mr. Baldwin suggested that when the Local Councils were elected, Illinois and Iowa were omitted, and unless provision had been made, he moved the re-election of last year's Local Councils for those states. Adopted.

Thereupon the Association adjourned until the next annual meeting.

EDWARD OTIS HINKLEY,
Secretary.

MEMORANDUM.

The Association gave a dinner to its members at the Grand Union Hotel on the evening of August 21st. Eighty-six members were present. Mr. Latrobe, of Maryland, presided. The following toasts were offered by the Presiding Officer, and responded to by members:

THE LEGAL PROFESSION, - CORTLANDT PARKER, New Jersey.
THE BENCH, - - - - LAFAYETTE S. FOSTER, Connecticut.
THE RETIRING PRESIDENT, - JAMES O. BROADHEAD, Missouri.
THE NEW ADMINISTRATION, - BENJAMIN H. BRISTOW, New York.
THE AMERICAN BAR ASSOCIATION, - A. R. LAWTON, Georgia.
THE NATIONALITY OF THE AMERICAN BAR ASSOCIATION, WILLIAM PRESTON, Kentucky.
THE KNOWLEDGE OF THE TITMOUSE AS TO THE GESTATION OF THE ELEPHANT, - - - ANTHONY Q. KEASBEY, New Jersey.
THE CANADA BAR, - - R. F. HALL, Sherbrooke, Canada.
THE COMMON LAW, - - - RICHARD VAUX, Pennsylvania.
THE BAR AS A CONSERVATIVE FORCE IN SOCIETY, ROBERT OULD, Virginia.
THE PRACTICE OF THE PROFESSION, RICHARD T. MERRICK, District of Columbia.
WOMAN AT THE BAR, - - CALVIN G. CHILD, Connecticut.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as "The American Bar Association." Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each annual meeting for the year ensuing:—A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state; the Council shall be a Standing Committee on nominations for office; an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be chairman of the Committee.

The following Committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

On Jurisprudence and Law Reform;

On Judicial Administration and Remedial Procedure;

On Legal Education and Admissions to the Bar;

On Commercial Law;

On International Law;

On Publications;

On Grievances.

A majority of those members of any Committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be *ex officio* chairman of such Council.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the bar of which the persons nominated belong. Such nominations must be transmitted, in writing, to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council.

All nominations thus made, or approved, shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them, upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association, upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any annual meeting of the Association, by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states, and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*state*," wherever used in this Constitution, shall be deemed to be equivalent to *state, territory* and the *District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows.

(*a*) Opening address of the President.
(*b*) Nominations and Election of Members.
(*c*) Election of the General Council.
(*d*) Reports of Secretary and Treasurer.
(*e*) Report of Executive Committee.
(*f*) Reports of Standing Committees,
 On Jurisprudence and Law Reform;
 On Judicial Administration and Remedial Procedure;
 On Legal Education and Admissions to the Bar;
 On Commercial Law;
 On International Law;
 On Publications;
 On Grievances.
(*g*) Reports of Special Committees.
(*h*) The Nomination of Officers.
(*i*) Miscellaneous Business.
(*j*) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association; such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—All papers read before the Association shall be lodged with the Secretary. The annual Address of the President, the Reports of Committees and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

OFFICERS AND COMMITTEES.

VI.—The terms of office of all Officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VII.—The President shall appoint all Committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary; and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

VIII.—The Council and all Standing Committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint.

IX.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the chairman shall appoint.

X.—Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint: reasonable notice shall be given by him to each member by mail.

ANNUAL DUES.

XI.—The annual dues shall be payable at the Annual Meeting, in advance; if any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law within sixty days after each meeting, to all members in default.

XII.—At any of the meetings of the Association, Members of the Bar of any foreign country, or of any state who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

PRESIDENT,

BENJAMIN H. BRISTOW,

Of New York.

SECRETARY,

EDWARD OTIS HINKLEY,

No. 43 North Charles Street, Baltimore, Maryland.

TREASURER,

FRANCIS RAWLE,

No. 402 Walnut Street, Philadelphia, Pennsylvania.

EXECUTIVE COMMITTEE,

L. P. POLAND, *St. Johnsbury, Vermont,* Chairman,
SIMEON E. BALDWIN, *New Haven, Connecticut,*
WILLIAM A. FISHER, *Baltimore, Maryland.*

EX-OFFICIO.

EDWARD OTIS HINKLEY, *Secretary,*
FRANCIS RAWLE, *Treasurer.*

COUNCIL.

Arkansas,	U. M. Rose.
Connecticut,	Alvan P. Hyde.
District of Columbia,	J. Hubley Ashton.
Georgia,	George A. Mercer.
Illinois,	Thomas Hoyne.
Indiana,	Azro Dyer.
Kentucky,	James S. Pirtle.
Louisiana,	Carleton Hunt.
Maine,	Almon A. Strout.
Maryland.	Skipwith Wilmer.
Massachusetts,	Edmund H. Bennett.
Michigan,	O'Brien J. Atkinson.
Mississippi,	Joseph E. Leigh.
Missouri,	Joseph Shippen,
Nebraska,	Charles F. Manderson.
New Hampshire,	John M. Shirley.
New Jersey,	John W. Taylor.
New York,	E. F. Bullard.
Ohio,	William T. McClintock.
Pennsylvania,	Thomas E. Franklin.
Vermont,	Luke P. Poland.
Virginia,	Robert Ould.
West Virginia,	John A. Hutchinson.

VICE-PRESIDENTS

AND

MEMBERS OF LOCAL COUNCILS.

ALABAMA.—Vice-President, THOMAS H. WATTS.

Local Council, D. S. TROY, DAVID CLOPTON.

ARKANSAS.—Vice-President, JOHN J. HORNER.

Local Council, JAMES C. TAPPAN, J. M. MOORE.

CALIFORNIA.—Vice-President, JOHN N. POMEROY.

CONNECTICUT.—Vice-President, ORIGEN S. SEYMOUR.

Local Council, HENRY C. ROBINSON, C. B. ANDREWS.

DISTRICT OF COLUMBIA.—Vice-President, H. H. WELLS.

Local Council, R. T. MERRICK, NATHANIEL WILSON.

DELAWARE.—Vice-President, ANTHONY HIGGINS.

GEORGIA.—Vice-President, ALEXANDER R. LAWTON.

Local Council, N. J. HAMMOND, L. N. WHITTLE.

ILLINOIS Vice-President, DAVID DAVIS.

Local Council, O. H. BROWNING, LYMAN TRUMBULL, G. KOERNER.

INDIANA.—Vice-President, THOMAS A. HENDRICKS.

Local Council, A. W. HENDRICKS, ASA IGLEHART, ROBERT S. TAYLOR.

IOWA.—Vice-President, W. G. HAMMOND.

Local Council, GEO. G. WRIGHT, OLIVER P. SHIRAS.

KENTUCKY.—Vice-President, WILLIAM PRESTON.

Local Council, JOHN W. STEVENSON, JOHN MASON BROWN.

LOUISIANA.—Vice-President, F. P. POCHÉ.

Local Council, THOMAS J. SEMMES, T. L. BAYNE.

MAINE.—Vice-President, NATHAN WEBB.

Local Council, WILLIAM PUTNAM, F. A. WILSON.

MARYLAND.—Vice-President, R. J. GITTINGS.

Local Council, A. LEO KNOTT, W. J. ROSS, HENRY STOCKBRIDGE, J. J. ALEXANDER.

MASSACHUSETTS.—Vice-President, WILLIAM GASTON.

Local Council, LEONARD A. JONES, FRANK GOODWIN.

MICHIGAN.—Vice-President, THOMAS M. COOLEY.

Local Council, ARCHIBALD McDOWELL, JOHN ATKINSON, EDWIN WILLETTS.

MISSISSIPPI.—Vice-President, LOCK E. HOUSTON.

Local Council, R. O. REYNOLDS, G. A. EVANS, T. C. CATCHINGS.

MISSOURI.—Vice-President, HENRY HITCHCOCK.

Local Council, JAMES O. BROADHEAD, EDW. C. KEHR, GEORGE W. BAILEY.

NEBRASKA.—Vice-President, JAMES M. WOOLWORTH.

Local Council, S. H. CALHOUN, CHAS. F. MANDERSON

NEW HAMPSHIRE.—Vice-President, GILMAN MARSTON.

Local Council, OSSIAN RAY, C. W. STANLEY.

NEW JERSEY.—Vice President, ABRAHAM GARRETSON.

Local Council, GARRET D. W. VROOM, WILLIAM E. POTTER, CHARLES BORCHERLING.

NEW YORK.—Vice-President, CLARKSON N. POTTER.

Local Council, WILLIAM A. BUTLER, JAMES M. DUDLEY, W. B FRENCH.

OHIO.—Vice-President, RUFUS KING.

Local Council, GEO. HOADLY, STANLEY MATTHEWS, S. O. GRISWOLD, RUFUS P. RANNEY.

PENNSYLVANIA.—Vice-President, GEORGE W. BIDDLE.

Local Council, A. A. OUTERBRIDGE, HENRY GREEN, GEORGE SHIRAS, JR.

RHODE ISLAND.—Vice-President, CHARLES S. BRADLEY.

Local Council, BENJAMIN F. THURSTON, W. P. SHEFFIELD.

SOUTH CAROLINA.—Vice-President, HENRY E. YOUNG.

Local Council, W. H. BRAISLEY.

TENNESSEE.—Vice-President, WILLIAM F. COOPER.

Local Council, ALBERT T. McNEAL, B. M. ESTES.

VIRGINIA.—Vice-President, ROBERT OULD.

Local Council, W. J. ROBERTSON, LEGH R. PAGE.

VERMONT.—Vice-President, E. J. PHELPS.

Local Council, GUY C. NOBLE, CHARLES N. DAVENPORT.

COMMITTEES.

ON JURISPRUDENCE AND LAW REFORM.

WILLIAM ALLEN BUTLER, New York, N. Y.
SIMEON E. BALDWIN, New Haven, Conn.
EDWARD L. PIERCE, Boston, Mass.
THOMAS J. SEMMES, New Orleans, La.
HENRY HITCHCOCK, St. Louis, Mo.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

RUFUS KING, Cincinnati, O.
GEORGE W. BIDDLE, Philadelphia, Pa.
E. C. SPRAGUE, Buffalo, N. Y.
WALTER Q. GRESHAM, Indianapolis, Ind.
ALEXANDER R. LAWTON, Savannah, Georgia.

ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR.

CARLETON HUNT, New Orleans, La.
HENRY STOCKBRIDGE, Baltimore, Md.
U. M. ROSE, Little Rock, Ark.
GEORGE HOADLY, Cincinnati, O.
EDMUND H. BENNETT, Taunton, Mass.

ON COMMERCIAL LAW.

WILLIAM WALTER PHELPS, New York, N. Y.
GEORGE A. MERCER, Savannah, Ga.
JAMES T. MITCHELL, Philadelphia, Pa.
JULIAN J. ALEXANDER, Baltimore, Md.
LYMAN TRUMBULL, Chicago, Ill.

ON INTERNATIONAL LAW.

WILLIAM M. EVARTS, New York, N. Y.
THOMAS M. COOLEY, Ann Arbor, Mich.
WILLIAM GASTON, Boston, Mass.
JOHN W. STEVENSON, Covington, Ky.
LEGH R. PAGE, Richmond, Va.

ON PUBLICATION.

EDWARD J. PHELPS, Burlington, Vt.
JOHN C. DAY, Hartford, Conn.
FRANCIS RAWLE, Philadelphia, Pa.
A. Q. KEASBEY, Newark, N. J.
GILMAN MARSTON, Exeter, N. H.

ON GRIEVANCES.

J. RANDOLPH TUCKER, Lexington, Va.
RICHARD T. MERRICK, Washington, D. C.
JOHN N. ROGERS, Davenport, Iowa.
JAMES S. PIRTLE, Louisville, Ky.

MEMBERS—AUGUST, 1879-80.

ALABAMA.

BAKER, ALPHEUS	Eufala.
BRAGG, WALTER S.	Montgomery.
CLOPTON, DAVID	Montgomery.
PETTERS, EDMUND W.	Selma.
TROY, D. S.	Montgomery.
WATTS, THOMAS H.	Montgomery.

ARKANSAS.

CARLTON, HERMON	Pine Bluff.
HORNER, JOHN J.	Helena.
MOORE, J. M.	Little Rock.
ROSE, U. M.	Little Rock.
TAPPAN, JAMES C.	Helena.
THWEATT, P. O.	Helena.

CALIFORNIA.

POMEROY, JOHN N.	San Francisco.

CONNECTICUT.

ADAMS, SHERMAN W.	Hartford.
ANDREWS, CHARLES B.	Litchfield.
AVERILL, ROGER	Danbury.
BALDWIN, SIMEON E.	New Haven.
BREWSTER, LYMAN D.	Danbury.
CHILD, CALVIN G.	Stamford.
CORNWALL, HORACE,	Hartford.
CURTIS, JULIUS B.	Stamford.
DAY, JOHN C.	Hartford.
FOSTER, LAFAYETTE S.	Norwich.
HAMERSLEY, WILLIAM	Hartford.
HUBBARD, RICHARD D.	Hartford.

CONNECTICUT—Continued.

HYDE, ALVAN P.	Hartford.
INGERSOLL, CHARLES R.	New Haven.
KINGSBURY, FREDERICK J.	Waterbury.
MCCURDY, CHARLES J.	Lyme.
MINOR, WILLIAM T.	Stamford.
PARDEE, HENRY E.	New Haven.
PHILIPS, GILBERT W.	Putnam.
PLATT, JOHNSON T.	New Haven.
ROBINSON, HENRY C.	Hartford.
RUSSELL, TALCOTT H.	New Haven.
SEYMOUR, EDWARD W.	Litchfield.
SEYMOUR, ORIGEN S.	Litchfield.
WALDO, LOREN P.	Hartford.
WAYLAND, FRANCIS	New Haven.
WILLCOX, W. F.	Deep River.
WOODRUFF, GEORGE M.	Litchfield.
WOODWARD, ASA B.	Norwalk.

DELAWARE.

HIGGINS, ANTHONY	Wilmington.

DISTRICT OF COLUMBIA.

ASHTON, J. HUBLEY	Washington.
COX, WALTER S.	Washington.
MELOY, WILLIAM A.	Washington.
MERRICK, RICHARD T.	Washington.
MORRIS, M. F.	Washington.
MORSE, A. PORTER	Washington.
WELLS, H. H.	Washington.
WILSON, NATHANIEL	Washington.

FLORIDA.

JONES, CHARLES W.	Pensacola.

GEORGIA.

CHISHOLM, WALTER S.	Savannah.
ELY, ROBERT N.	Atlanta.
HAMMOND, N. J.	Atlanta.
HOOK, JAMES J.	Atlanta.
JACKSON, HENRY	Atlanta.

GEORGIA—Continued.

LAWTON, ALEXANDER R.	Savannah.
LYON, R. F.	Macon.
MERCER, GEORGE A.	Savannah.
MILLER, FRANK H.	Augusta.
WHITTLE, L. N.	Macon.

ILLINOIS.

BROWNING, O. H.	Quincy.
DAVIS, DAVID	Bloomington.
HOYNE, THOMAS	Chicago.
KOERNER, GUSTAVE	Belleville.
MASON, EDWARD G.	Chicago.
TRUMBULL, LYMAN	Chicago.

INDIANA.

BEST, JAMES J.	Waterloo.
BICKNELL, GEORGE A.	New Albany.
BUTLER, JOHN M.	Indianapolis.
DAVIDSON, THOMAS F.	Covington.
DURBIN, GREENE	Versailles.
DYER, AZRO	Evansville.
FAIRBANKS, CHARLES W.	Indianapolis.
FISHBACK, W. P.	Indianapolis.
FRAZER, JAMES S.	Warsaw.
GRESHAM, WALTER Q.	Indianapolis.
HARRIS, A. C.	Indianapolis.
HARRISON, BENJAMIN,	Indianapolis.
HENDRICKS, A. W.	Indianapolis.
HENDRICKS, THOMAS A.	Indianapolis.
HILL, RALPH	Indianapolis.
HINES, C. C.	Indianapolis.
HOBD, OSCAR B.	Indianapolis.
IGLEHART, ASA	Evansville.
KORBLY, C. A.	Madison.
LOWRY, R.	Fort Wayne.
MCDONALD, JOSEPH E.	Indianapolis.
MILLER, WILLIAM H. H.	Indianapolis.
MITCHELL, JOSEPH A. S.	Goshen.
PORTER, ALBERT G.	Indianapolis.
RAND, F.	Indianapolis.
ROBERTSON, R. S.	Fort Wayne.

INDIANA—Continued.

STANSIFER, S.	Columbus.
TAYLOR, EDWIN	Indianapolis.
TAYLOR, NAPOLEON B.	Indianapolis.
TAYLOR, R. S.	Fort Wayne.
TURPIE, DAVID	Indianapolis.
WILSON, JOHN M.	Indianapolis.
WILSON, W. C.	La Fayette.
WINTER, F.	Indianapolis.
ZOLLARS, ALLEN	Fort Wayne.

IOWA.

HAMMOND, WILLIAM G.	Iowa City.
ROGERS, JOHN N.	Davenport.
SHIRAS, OLIVER P.	Dubuque.
WRIGHT, GEORGE G.	Des Moines.

KANSAS.

GUTHRIE, JOHN	Topeka.

KENTUCKY.

BECK, JAMES B.	Lexington.
BENTON, M. M.	Covington.
BROWN, JOHN MASON	Louisville.
FEIGHAN, JOHN W.	Henderson.
MOORE, J. Z.	Owensboro.
O'HARA, JAMES	Covington.
PIRTLE, JAMES S.	Louisville.
POPE, ALFRED T.	Louisville.
PRESTON, WILLIAM	Lexington.
RUCKER, HENRY,	Paris.
STEVENSON, JOHN W.	Covington.
WILLSON, A. E.	Louisville.
YEAMAN, MALCOLM	Henderson.

LOUISIANA.

ACKLEN, JOSEPH H.	Pattersonville.
BAYNE, THOMAS L.	New Orleans.
BERMUDY, EDWARD	New Orleans.
BREAUX, G. A.	New Orleans.
CAMPBELL, JOHN A.	New Orleans.
CLARK, THOMAS ALLEN	New Orleans.
DENIS, HENRY	New Orleans.

LOUISIANA—Continued.

EUSTIS, J. B.	New Orleans.
FINNEY, JOHN	New Orleans.
GAUDET, J. L.	St. James.
GIBSON, R. L.	New Orleans.
GILLMORE, THOMAS	New Orleans.
GRIMA, ALFRED	New Orleans.
HERRON, ANDREW S.	Baton Rouge.
HUNT, CARLETON	New Orleans.
HUNT, RANDALL	New Orleans.
JAMES, CHARLES E.	New Orleans.
JONAS, B. F.	New Orleans.
KNOBLOCK, HENRY CLAY	Lafourche.
LEGENDRE, EMILE	St. James.
MCCONNELL, JAMES	New Orleans.
MERRICK, EDWIN T.	New Orleans.
MILLER, HENRY C.	New Orleans.
MOORE, ISAIAH D.	Lafourche.
NICHOLS, FRANCIS T.	New Orleans.
NEW, JOHN H.	New Orleans.
OLIVIER, VICTOR	New Orleans.
POCHÉ, F. P.	St. James.
PUGH, EDWARD W.	Ascension.
RACE, GEORGE W.	New Orleans.
RICHARDSON, ROBERT	Monroe.
SEMMES, THOMAS J.	New Orleans.
SIMS, R. NICHOLAS	Ascension.
SPOFFORD, HENRY M.	New Orleans.
WINCHESTER, J. RICHARD.	St. James.
WICKLIFFE, ROBERT C.	Bayou Sara.

MAINE.

BAKER, ORVILLE D.	Augusta.
BARER, LEWIS	Bangor.
CLEAVES, NATHAN	Portland.
DRUMMOND, JOSIAH H.	Portland.
FESSENDEN, JAMES D.	Portland.
FRYE, WILLIAM P.	Lewistown.
GOULD, A. P.	Thomaston.
HOLMES, GEORGE F.	Portland.
PUTNAM, WILLIAM L.	Portland.
STETSON, CHARLES P.	Bangor.
STROUT, A. A.	Portland.
WEBB, NATHAN	Portland.
WILSON, F. A.	Bangor.

MARYLAND.

ALEXANDER, JULIAN J.	Baltimore.
BEASTEN, CHARLES JR.	Baltimore.
BOARMAN, ROBERT R.	Towsontown.
BONAPARTE, CHARLES J.	Baltimore.
FISHER, WILLIAM A.	Baltimore.
GITTINGS, RICHARD J.	Baltimore.
GROOME, JAMES B.	Elkton.
HAGNER, A. B.	Annapolis.
HINKLEY, EDWARD OTIS	Baltimore.
KEENE, JOHN HENRY	Baltimore.
KEENE, ROBERT G.	Baltimore.
KNOTT, A. LEO	Baltimore.
LATROBE, JOHN H. B.	Baltimore.
LINTHICUM, THALES S.	Baltimore.
MARSHALL, CHARLES	Baltimore.
MATTHEWS, R. STOCKETT	Baltimore.
MCINTOSH, DAVID G.	Towsontown.
ROBERTS, JOSEPH K., Jr.	Upper Marlboro
ROSS, WILLIAM J.	Frederic City.
SHARP, GEORGE M.	Baltimore.
STOCKBRIDGE, HENRY	Baltimore.
VENABLE, RICHARD M.	Baltimore.
WILMER, SKIPWITH	Baltimore.

MASSACHUSETTS.

BALDWIN, G. W.	Boston.
BELL, C. V.	Lawrence.
BENNETT, EDMUND H.,	Taunton.
BOND, D. W.	Northampton.
BULLOCK, A. G.	Worcester.
CLIFFORD, CHARLES W.	New Bedford.
CRAPO, WILLIAM H.	New Bedford.
FOX, WILLIAM H.	Taunton.
GASTON, WILLIAM	Boston.
GOODWIN, FRANK	Boston.
HARRIS, B. W.	E. Bridgewater.
HEMENWAY, ALFRED	Boston.
HURD, FRANCIS W.	Boston.
HYDE, HENRY D.	Boston.
JONES, LEONARD A.	Boston.
KNOWLTON, M. P.	Springfield.
LADD, NATH. W.	Boston.
LAMB, S. O.	Greenfield.
MARSTON, GEORGE	New Bedford.

MASSACHUSETTS—Continued.

MORTON, JAMES M.	Fall River.
MUZZEY, HENRY W.	Boston.
PIERCE, EDWARD L.	Boston.
RANNEY, A. A.	Boston.
RICHARDSON, DANIEL A.	Lowell.
STETSON, THOMAS M.	New Bedford.
SWIFT, M. G. B.	Fall River.
THAYER, JAMES B.	Cambridge.
TRAIN, CHARLES R.	Boston.

MICHIGAN.

ATKINSON, JOHN	Detroit.
ATKINSON, O'BRIEN J.	Port Haven.
COOLEY, THOMAS M.	Ann Arbor.
MCDOWELL, ARCHIBALD	Bay City.
WILLETTS, EDWIN	Monroe.

MISSISSIPPI.

CALHOUN, S. S.	Canton.
CATCHINGS, T. C.	Vicksburg.
CHALMERS, H. H.	Panola.
CLIFTON, OLIVER	Jackson.
EVANS, GEORGE A.	Columbus.
GEORGE, J. Z.	Jackson.
HARRIS, N. E.	Vicksburg.
HARRISON, JAMES T.	Columbus.
HOUSTON, LOCK E.	Aberdeen.
JOHNSTON, FRANK	Canton.
LEIGH, JOSEPH E.	Columbus.
MATHEWS, BEVERLY	Columbus.
REYNOLDS, R. O.	Aberdeen.
SIMS, W. H.	Columbus.
SYKES, E. O.	Aberdeen.
TUCKER, W. F.	Oaktown.
YOUNG, UPTON	Vicksburg.

MISSOURI.

BAILEY, GEORGE W.	St. Louis.
BLISS, P.	Columbus.
BROADHEAD, JAMES O.	St. Louis.
COLLIER, M. DWIGHT	St. Louis.
COMINGO, A.	Independence.

MISSOURI—Continued.

HENDERSON, J. B.	St. Louis.
HITCHCOCK, HENRY	St. Louis.
KEHR, EDWARD C.	St. Louis.
KRUM, JOHN M.	St. Louis.
ORRICK, JOHN C.	St. Louis.
SHIPPEN, JOSEPH	St. Louis.
TODD, ALBERT	St. Louis.
WADE, WILLIAM P.	St. Louis.
WITHROW, JAMES E.	St. Louis.

NEBRASKA.

ABBOTT, N. C.	Lincoln.
AMORY, GEO. K.	Lincoln.
CALHOUN, S. H.	Nebraska City.
GALEY, S. B.	Lincoln.
HALL, D. G.	Lincoln.
LAIRD, JAMES	Lincoln.
MANDERSON, CHARLES F.	Omaha.
MARQUETT, T. M.	Lincoln.
POUND, S. B.	Lincoln.
WOOLWORTH, J. M.	Omaha.

NEW HAMPSHIRE.

BINGHAM, GEORGE A.	Littleton.
BINGHAM, HARRY	Littleton.
CARPENTER, A. P.	Bath.
DREW, IRVING W.	Lancaster.
EASTMAN, SAMUEL C.	Concord.
FELLOWS, JOSEPH W.	Manchester.
HATCH, A. H.	Portsmouth.
LADD, WILLIAM S.	Lancaster.
MARSTON, GILMAN	Exeter.
RAY, OSSIAN	Lancaster.
SANBORN, E. B. S.	Franklin.
SMITH, JEREMIAH	Dover.
SHIRLEY, JOHN M.	Andover.
STANLEY, C. W.	Manchester.
WAIT, ALBERT S.	Newport.

NEW JERSEY.

ABEEL, GUSTAVUS N.	Newark.
BEDLE, JOSEPH D.	Jersey City.
BORCHERLING, CHARLES	Newark.
CLARK, JAMES OLIVER	Newark.
DICKINSON, S. MEREDITH	Trenton.
GARRETSON, A. Q.	Jersey City.
GOBLE, L. SPENCER	Newark.
GUMMERE, BARKER	Trenton.
KEASBEY, A. Q.	Newark.
KINNEY, THOMAS T.	Newark.
LITTLE, H. S.	Trenton.
MCCARTER, LUDLOW	Newark.
MCCARTER, THOMAS N.	Newark.
MCGILL, ALEXANDER T., Jr.	Jersey City.
PARKER, CORTLANDT	Newark.
POTTER, WILLIAM E.	Bridgetown.
TAYLOR, JOHN W.	Newark.
TEESE, FRED'K H.	Newark.
VREDENBURGH, JAMES B.	Jersey City.
VROOM, GARRET D. W.	Trenton.
WEART, JACOB	Jersey City.
WEEKS, WILLIAM R.	Newark.
WHITE, HENRY S.	Jersey City.
WILLIAMS, WASHINGTON B.	Jersey City.
WOODRUFF, ROBERT S., Jr.	Trenton.

NEW YORK.

BAKER, ASHLEY D. L.	Gloversville.
BEAMAN, CHARLES S.	New York.
BENEDICT, ROBERT D.	New York.
BLAKE, CHARLES F.	New York.
BOARDMAN, ANDREW	New York.
BRISTOW, BENJAMIN H.	New York.
BULLARD, E. F.	Saratoga.
BURCHARD, NATHAN	Brooklyn.
BURNETT, HENRY L.	New York.
BURRILL, JOHN E.	New York.
BUTLER, WM. ALLEN	New York.
COMSTOCK, GEORGE F.	Syracuse
CULLEN, EDGAR F.	Brooklyn.
DUDLEY, JAMES M.	Johnstown.
DURFEE, H. R.	Palmyra.
EATON, DORMAN B.	New York.

NEW YORK—Continued.

EATON, SHERBURNE B.	New York.
EMOTT, JAMES	New York.
EVARTS, WILLIAM M.	New York.
FORSTER, GEORGE H.	New York.
FRENCH, W. B.	Saratoga.
FROST, CALVIN	Peekskill.
FULLERTON, WILLIAM	New York.
GERRY, ELBRIDGE T.	New York.
HALE, MATTHEW	Albany.
HALE, ROBERT	Elizabethtown.
HAND, CLIFFORD A.	New York.
HAND, SAMUEL	Albany.
HIBBARD, GEORGE B.	Buffalo.
HOFFMAN, JOHN T.	New York.
JACKSON, SAMUEL W.	Schenectady.
KERNAN, FRANCIS	Utica.
LANDON, JUDSON F.	Schenectady
LOWREY, JAMES P.	New York.
LYON, W. A.	New York.
MACFARLAND, W. W.	New York
MARSH, LUTHER R.	New York.
MATTHEWS, ALBERT	New York.
MITCHELL, EDWARD	New York.
NASH, STEPHEN P.	New York.
NELSON, HOMER A.	Poughkeepsie.
NICOLL, DELANCEY	New York.
OLNEY, PETER B.	New York.
PARKER, AMASA J.	Albany.
PECKHAM, WHEELER H.	New York.
PERKINS, J. B.	Rochester.
PHELPS, WM. WALTER	New York.
POND, A.	Saratoga.
PORTER, JOHN K.	New York.
POTTER, CLARKSON N.	New York.
POTTER, PLATT	Schenectady.
PRIME, RALPH E.	Yonkers.
RICHARDSON, CHARLES A.	Canandaigua.
ROBINSON, E. RANDOLPH	New York.
ROGERS, SHERMAN E.	Buffalo.
RUGER, WILLIAM C.	Schenectady.
SAYRES, GILBERT	Brooklyn.
SCHOONMAKER, AUGUSTUS, JR.	Albany.
SCUDDER, HENRY J.	New York.

NEW YORK—Continued.

SHEPARD, ELLIOTT F.	New York.
SILLIMAN, BENJAMIN D.	New York.
SMITH, HENRY	Albany.
SMITH, HORACE E.	Johnstown.
SPRAGUE, E. C.	Buffalo.
STERNE, SIMON	New York.
STICKNEY, ALBERT	New York.
STOUGHTON, E. W.	New York.
SULLIVAN, ALGERNON S.	New York.
THOMPSON, JOHN	Poughkeepsie.
TOWNSEND, MARTIN I.	Troy.
VAN COTT, JOSHUA M.	New York.
VANDERPOEL, A J.	New York.
VAN WINKLE, E. S.	New York.
WARD, JOHN E.	New York.
WHEATON, HENRY	Poughkeepsie.
WHEELER, EVERETT P.	New York.
WHITING JOHN N.	New York.
WHITNEY, WILLIAM C.	New York.
WILLIS, BENJ. A.	New York.
WINSLOW, JOHN	New York.

OHIO.

BALDWIN, CHARLES C.	Cleveland.
BRAZEE, JOHN J.	Lancaster.
BRICE, C. S.	Lima.
COLSTON, EDWARD	
CRAIGHEAD, S. C.	Dayton.
DEWITT, E. L.	Columbus.
DOUGHERTY, W. A.	Lancaster.
EVANS, N. W.	Portsmouth.
GARDNER, MILLS	Washington C.H.
GRANGER, M. M.	Janesville.
GRISWOLD, SENECA O.	Cleveland.
HACKERDORN, W. E.	Lima.
HARRISON, RICHARD A.	Columbus.
HOADLY, GEORGE	Cincinnati.
HOUCK, GEORGE W.	Dayton.
HUTCHINS, W. A.	Portsmouth.
IRVINE, JAMES	Lima.
JOHNSON, EDGAR M.	Cincinnati.
JOHNSON, ROBERT A.	Cincinnati.

OHIO—Continued.

JOHNSON, WILLIAM W.	Ironton.
KING, RUFUS	Cincinnati.
MARTIN, CHARLES	Lancaster.
MASON, JAMES	Cleveland.
MATTHEWS, STANLEY	Cincinnati.
MCCLINTOCK, W. T.	Chillicothe.
MCMAHON, JOHN A.	Dayton.
MEEK, BASIL	Clyde.
MERRILL, N.	Wauseon.
MOORE, OSCAR F.	Portsmouth.
MORRIS, S. W.	Ironton.
NOBLE, HENRY C.	Columbus.
PAGE, HENRY F.	Circleville.
PORTER, W. T.	Cincinnati.
RANNEY, RUFUS P.	Cleveland.
SCRIBNER, CHARLES H.	Toledo.
SHAW, R. K.	Marietta.
STANBERRY, HENRY	Cincinnati.
TAFT, ALPHONSO	Cincinnati.
YOUNG, W. D.	Ripley.

PENNSYLVANIA.

ARMSTRONG, WM. H.	Williamsport.
BIDDLE, GEORGE W.	Philadelphia.
BISPHAM, GEORGE T.	Philadelphia.
BREWSTER, BENJ. H.	Philadelphia.
BRIDGES, S. A.	Allentown.
BRUNDAGE, A. R.	Wilkesbarre.
CURTIN, ANDREW G.	Bellefonte.
DALLAS, GEORGE M.	Philadelphia.
ELLMAKER, NATHANIEL	Lancaster.
FRANKLIN, THOMAS E.	Lancaster.
GREEN, HENRY	Easton.
HAY, MALCOLM	Pittsburgh.
HEMPHILL, JOSEPH	West Chester.
LEWIS. JOSEPH J.	West Chester.
LITTLE, WILLIAM E.	Tunkhannock.
LUCKENBACH, W. D.	Allentown.
MCMURTRIE, RICHARD C.	Philadelphia.
MITCHELL, JAMES T.	Philadelphia.
MONAGHAN, ROBERT E.	West Chester.
NORTH, HUGH M.	Columbia.

PENNSYLVANIA—Continued.

OUTERBRIDGE, ALBERT A.	Philadelphia.
PALMER, HENRY W.	Wilkesbarre.
PENNYPACKER, CHARLES H.	West Chester.
PERKINS, SAMUEL C.	Philadelphia.
PRICE, J. SERGEANT	Philadelphia.
RAWLE, FRANCIS	Philadelphia.
RAWLE, WM. HENRY	Philadelphia.
SEIBERT, W. N.	New Bloomfield.
SHARP, ISAAC S.	Philadelphia.
SHIRAS, GEORGE, JR.	Pittsburgh.
SHOEMAKER, L. D.	Wilkesbarre.
STURGIS, E. B.	Scranton.
VAUX, RICHARD	Philadelphia.
WADDELL, WILLIAM B.	West Chester.
WOODWARD, STANLEY	Wilkesbarre.

RHODE ISLAND.

BRADLEY, CHARLES S.	Providence.
SHEFFIELD, WILLIAM P.	Newport.
THURSTON, BENJ. F.	Providence.
VANZANDT, C. C.	Newport.

SOUTH CAROLINA.

BACOT, J. W.	Charleston.
BARKER, THEODORE G.	Charleston.
BARNWELL, JOSEPH W.	Charleston.
BRAISLEY, W. H.	Charleston.
BURNETT, B. R.	Charleston.
CAMPBELL, JAMES B.	Charleston.
DESAUSSURE, WILMOT G.	Charleston.
JEWETT, W. ST. JULIEN	Charleston.
MAGRATH, A. G.	Charleston.
MCCRADY, EDWARD JR.	Charleston.
MITCHELL, JULIAN	Charleston.
SIMONTON, C. H.	Charleston.
SMITH, HENRY A. M.	Charleston.
SMYTHE, AUGUSTINE T.	Charleston.
WALKER, G. R.	Charleston.
YOUNG, HENRY E.	Charleston.

TENNESSEE.

COOPER, WILLIAM F.	Nashville.
ESTES, BEDFORD M.	Memphis.
MCNEAL, ALBERT T.	Bolivar.

VERMONT.

BELDEN, HENRY C.	St. Johnsbury.
BROMLEY, J. B.	Castleton.
BURNAP, W. L.	Burlington.
CRANE, W. D.	Newport.
DAVENPORT, CHARLES N.	Brattleboro.
DUNTON, W. C.	Rutland.
FRENCH, WARREN C.	Woodstock.
GARDNER, ABRAHAM B.	Bennington.
HINCKLEY, LYMAN G.	Chelsea.
JOHNSON, WILLIAM E.	Woodstock.
NOBLE, GUY C.	St. Albans.
PAUL, NORMAN	Woodstock.
PHELPS, E. J.	Burlington.
POLAND, LUKE P.	St. Johnsbury.
POWELL, E. H.	Richford.
POWERS, H. H.	Morrisville.
PROUT, JOHN	Rutland.
ROBERTS, DANIEL	Burlington.
SHAW, W. G.	Burlington.
SMALLEY, B. B.	Burlington.
STEVENS, HIRAM F.	St. Albans.
STEWART, JOHN W.	Middlebury.
TYLER, JAMES M.	Brattleboro.
VEAZEY, WHEELOCK G.	Rutland.
WALKER, ALDACE F.	Rutland.
WALKER, W. H.	Ludlow.
WHEELER, H. H.	Jamaica.

VIRGINIA.

DANIEL, J. W.	Lynchburg.
HAMILTON, ALEXANDER	Petersburg.
OULD, ROBERT	Richmond.
PAGE, LEGH R.	Richmond.
PAYNE, WILLIAM H.	Warrentown.
ROBERTSON, WILLIAM J.	Charlottesville.
STILES, ROBERT	Richmond.
TUCKER, J. RANDOLPH	Lexington.
WALTON, MOSES	Woodstock.

WEST VIRGINIA.

BOGGESS, CALEB	Clarksburg.
HUTCHINSON, JOHN A.	Parkersburg.
JACKSON, J. B.	Parkersburg.

APPENDIX.

ADDRESS

OF

JAMES O. BROADHEAD,

PRESIDENT OF THE ASSOCIATION.

GENTLEMEN OF THE ASSOCIATION:—By the eighth article of the Constitution of our Association, it becomes my duty at this annual meeting "to communicate the most *noteworthy* changes "in the statute law on points of general interest, made in the "several states and by Congress during the preceding year."

It is also made the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

Inasmuch as only twenty-one states were represented in the General Council, and as but few of the members have made reports, it became necessary for me to look to other sources of information for the facts necessary to be communicated by me under the requirements of the Constitution. The secretaries of state of many of the states have kindly furnished me with copies of the Session Acts of the legislatures which have been in session during the last year.

Many of the states hold biennial sessions of the legislature, so that in some of them there has been no legislation since the last meeting of our Association, or to use legal phraseology, since the last continuance (*puis darrein continuance*).

In giving the "noteworthy changes in statute law on points of general interest" I have not undertaken to give, except in some instances, changes which are new merely to the state

adopting them, but mainly those which are new to the legislation of the country, for the obvious reason that a different course would make my communication too long, and for the further reason that the course that I have adopted is in accordance with a fair construction of the duties imposed upon me by our Constitution.

Whilst, therefore, having to exercise my own judgment as to what are noteworthy changes in the statute laws of the different states, I may not embrace all which, in the opinion of others, come under that head, and may, on the other hand, allude to some laws which might properly be left out. I have endeavored to be accurate in my statements in regard to such matters of legislation as in my opinion come properly within the purview of my duty.

ARKANSAS.

By an Act of the Arkansas legislature, approved February 27, 1879, all laws making counties corporations, and authorizing them to sue and be sued, are repealed. The Act further provides that all persons having demands against any county shall present the same to the county court of the county. From the judgment of the county court an appeal may be taken, and if the judgment of the county court is reversed the judgment of reversal shall be certified to the county court, which shall thereupon enter the judgment of the superior court as its own. When the county has a cause of action, suit may be brought by the state to the use of the county.

By an Act approved March 17, 1879, it is provided that in cases of sales of property under mortgages and deeds of trust the property to be sold shall first be appraised by appraisers appointed by the nearest justice of the peace, and if it does not sell for two-thirds of its appraised value then it must be offered again for sale not less than sixty days thereafter, if the property

be personal, and not less than one year thereafter if it be real. At such second offering the property shall be sold for whatever it will bring, without reference to the appraisement. But in the case of lands the mortgagee may still redeem at any time within a year from the day of sale, by paying the amount at which they were sold, with ten per cent. interest thereon, and the costs of sale. But this Act does not apply to sales of property for the purchase money thereof.

CALIFORNIA.

The State of California holds biennial sessions of the legislature, and there has been no session since our last meeting. But in that state a convention was held during the last year of delegates chosen to form a new constitution. The constitution framed by the convention was submitted to the people and adopted by a very decided popular majority in May last. This constitution contains some provisions entirely new to the profession, and as they have attracted much public attention, I have thought it not inappropriate to allude to them, although they do not, strictly speaking, come under the head of statute laws.

Constitutional law, as heretofore understood in our American system, embraces those general rules which determine the limits of administrative authority, and circumscribe the action of the government in relation to the constituent personal elements of the state—in other words, it is a law for the political authority of the state. The powers granted, the powers expressly denied, and the declaration of rights reserved to the individuals who compose the state—are all limitations upon the authority of the government, and whilst it cannot be denied that the people of any state may, under our American system, through what are called constitutional conventions, make rules to govern individuals in their relations to each other and to the state as members of the community, yet it has been thought best for the interest of every citizen, and for the cause of civil liberty

itself, that his rights of person and of property, and his relation to others as well as to the state, should, under the limitations above referred to, be controlled by laws made by a government composed of several departments, or of several bodies, each to some extent being a check upon the other; because the will of an unchecked majority may in times of great popular excitement degenerate into a despotism more odious and more oppressive than that of a single tyrant. We have in this country a common law of liberty which is higher even than written constitutions, and which demands not only that all the powers of government should be divided into three departments, but that the legislative department itself should be composed of more than one man, or one body of men; each having powers independent of the other. Hence it is that the law-making power has been vested in two houses, and that their will is also subject to a certain extent to be checked by the executive department of the government.

A more dangerous proposition could hardly be advanced than that one body of men should have the power to make all the laws, and it does not help the matter to say that a body of men so empowered has been chosen by a majority of the people of the state; for that really would be to deny to the minority all rights, except such as the majority choose to give them, whereas in a just government each citizen is entitled to the same protection with every other.

This subject belongs to the science of jurisprudence in its broadest sense. And as in the very nature of things the doctrine cannot be enforced by any legal sanctions, it must be established and maintained by an enlightened public sentiment. I allude to it here, because of late years the constitutional conventions of many states have in their action departed very widely from this most salutary principle, and none of them more so than the convention which framed the constitution of California.

I am not disposed to impugn the wisdom of the provisions to

which reference will be made, if they appeared as acts of ordinary legislation; but it seems to me that many of them are out of place in a state constitution.

It is often the case that in seeking for something better we lose the good which we have; and it may be that in attempting to curb the power of overgrown monopolies, or to eradicate evils which have grown up in the administration of state affairs, a precedent has been set which in the end will endanger the cause of civil liberty.

This new constitution of California provides that each stockholder of a corporation or joint stock association shall be personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock owned by him bears to the whole amount of the subscribed capital stock; and that the directors and trustees of corporations and joint stock companies shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of the corporation during the term of office of the director or trustee.

The legislature is not authorized to extend any franchise or charter, nor to remit the forfeiture of any franchise or charter of a corporation now existing, or which shall hereafter exist, under the laws of the state.

No corporation is authorized to issue stock or bonds except for money paid, labor done, or property actually received; and all fictitious increase of stock or indebtedness is declared to be void.

The cumulative system of voting for directors of corporations is provided for to the exclusion of every other mode, except that members of co-operative societies, formed for agricultural, mercantile and manufacturing purposes, may vote in manner prescribed by law.

A corporation may be sued in the county where the contract is made or is to be performed, or where the obligation or lia-

bility arises or the breach occurs, or in the county where the principal place of business of the corporation is situated.

Railroad companies are required to recevie and transport each other's passengers, tonnage and cars, without delay or discrimination.

No president, director, officer, agent or employee of any railroad or canal company shall be interested directly or indirectly in the furnishing of material or supplies to the company, or in the business of transportation as a common carrier of freight or passengers over the road or canal owned, leased, controlled or worked by the company—except to the extent of his ownership of stock therein.

No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in the state, or with any common carrier, by which combination or contract the earnings of the one doing the carrying are to be shared by the others not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight, from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority, in which shall be vested the powers to regulate fares or freights.

Provision is made for the election of three commissioners of transportation, who have full power and are required to establish rates of charges for the transportation of passengers or freight by railroad or other transportation companies, and to publish the same, from time to time, with such changes as they may make. Any failure to conform to the established rates of transportation on the part of a transportation company shall subject the company to a fine not exceeding twenty thousand dollars; and any officer or employee of a company who shall demand or receive rates in excess of those established by the com-

mission shall be fined not exceeding five thousand dollars and imprisoned not exceeding one year.

In regard to taxation, it is amongst other things provided that land and the improvements thereon shall be separately assessed, and that cultivated and uncultivated land of the same quality and similarly situated shall be assessed at the same value.

It also provided that a mortgage, deed of trust, contract or obligation by which a debt is secured shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, and except as to railroads or quasi public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of the security shall be assessed and taxed to the owner of the security in the county where the property is situated.

The tax levied is made a lien upon the property and the security, and may be paid by either party; if paid by the owner of the security, the amount of the tax shall become a part of the debt secured, and if the tax on the security is paid by the owner of the property, it shall constitute to that extent a payment of the debt secured.

Every contract by which a debtor is obliged to pay any tax or assessment on money loaned, or on any mortgage, deed of trust or other lien, shall, as to any interest specified therein, or as to such tax or assessment, be null and void.

The right to collect rates or compensation for the use of water supplied to any county, city or town or the inhabitants thereof, is declared to be a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

No corporation now existing, or that may hereafter be formed, under the laws of the state, shall employ, directly or indirectly, in any capacity, any Chinese or Mongolian, nor shall they be employed in any state, county, municipal, or other public work.

The legislature is required to pass laws prohibiting the introduction of Chinese into the state after the adoption of the Constitution.

It is declared that no native of China shall enjoy the elective franchise. And the convention, in their address to the people of the state, say that this provision is introduced to guard against a possible change in the naturalization laws admitting Chinese to citizenship, and that it was necessary to exclude all natives of China in order to avoid the prohibition contained in the fifteenth amendment, which declares that "The right of "citizens of the United States to vote shall not be denied or "abridged by any state on account of race, color, or previous "condition of servitude."

It is difficult to apprehend how the prohibition contained in the fifteenth amendment is avoided by declaring beforehand to the United States that if the Chinese are permitted by the naturalization laws to become citizens, they shall nevertheless not enjoy the elective franchise. This attempt to repeal the fifteenth amendment will not, in my judgment, stand the test of judicial scrutiny. If they had said in the constitution that no man wearing a queue should enjoy the elective franchise, the prohibition might have been avoided—because the fifteenth amendment to the constitution says nothing about queues—but it does protect all races and all colors when they become citizens. In connection with this subject it may not be out of place to refer to a case tried during the last month, in which Justice Field, of the Supreme Court, whilst holding the United States Circuit Court in San Francisco, decided a question of some interest which arose under the provisions of an ordinance of the city of San Francisco.

The state had passed a law limiting the number of persons who might reside or lodge in a room or tenement having a capacity of so many cubic feet, and a violation of the provision of this law subjected the party to imprisonment in the county jail. A Chinaman in San Francisco was convicted of violating

the law and sentenced to imprisonment in the county jail. The authorities of the city of San Francisco passed an ordinance providing that all persons confined in the jail of the city should have their hair cut off within one inch of their heads.

The sheriff, in obedience to the ordinance, cut off the queue of the Chinaman, and he brought suit against the sheriff for damages. The complaint was demurred to, and the U. S. Circuit Court, Judge Field presiding, overruled the demurrer, holding that the act of the sheriff was unauthorized and a trespass; that the ordinance of the city was void; that the city under its charter was not authorized to pass such an ordinance; and second, that it was a cruel and unusual punishment and in violation of the constitution of the United States.

All contracts for the sale of shares of the capital stock of any corporation or association on margin or to be delivered at a future day shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

In civil actions three-fourths of a jury may render a verdict.

The provisions of the constitution are declared to be mandatory and prohibitory, unless by express words they are declared to be otherwise.

The Supreme Court of the state consists of one chief justice and six associate justices. The state is divided into two judicial departments, and the court may sit in departments or in banc.

The chief justice is required to assign three of the associate justices to each of the departments, which assignment may be changed from time to time, the justices being competent to sit in either department. Each department shall have the power to hear and determine causes.

The chief justice is required to apportion the business to each department, and may in his discretion order any cause before the court to be heard in banc. No judgment of a

department shall be final until the expiration of thirty days unless approved by the chief justice in writing, with the concurrence of two associate justices. Within the period of thirty days, unless so approved, a court in banc may be called, either by four associate justices or by the chief justice, for the hearing of any particular cause; the chief justice is authorized to convene the court in banc at any time.

Before drawing their salaries the justices of the Supreme Court and the judges of the superior courts are required to make and file an affidavit that no case remains undecided in their courts which has been submitted for ninety days.

Many of these provisions of the constitution of California partake of the character of ordinary acts of legislation; they are in fact laws or ordinances adopted without the concurrence of the legislative and executive departments of the government, and yet operating directly upon the individual.

CONNECTICUT.

The State of Connecticut has adopted a mode of procedure in courts of justice similar in its general features to that now in force in twenty states and seven territories. The object being: First, to abolish (with certain exceptions) the various forms of civil actions, and allow the suitor to come into court with a simple complaint, stating in plain language his real grievance; second, to permit the concurrent administration of law and equity by one and the same court, and in the same course of procedure.

An Act has also been passed declaring "That every tramp "shall be punished by imprisonment in the state prison not "more than one year."

Tax liens may be foreclosed in the manner provided by law for the foreclosure of mortgages of real estate, and the court may limit the time of redemption or order the sale of the property.

GEORGIA.

The most important law passed by the Georgia Legislature is an Act authorizing the issue of state bonds to redeem the outstanding indebtedness of the state falling due. They are coupon bonds payable to bearer, and issued in sums of not less than five nor more than one hundred dollars, and in no event to be sold for less than par. They bear four per cent. interest, and are payable in six years at the office of the state treasurer; the interest is payable on the 1st of January of each year, the bonds to be engraved on the best bank-note paper, and of a particular dimension, as fixed by the Act. They are being readily bought up, and will pass as bank-notes. The question has been raised as to whether they come within the provision of the Federal Constitution against the emission of bills of credit. This Act was approved December 14, 1878. There is an Act approved December 16, 1878, providing for the probate of foreign wills, where the testator has died in another state, leaving property in the State of Georgia disposed of by said will. The courts of ordinary of the several counties may take proof of the will, and if no person resident of the state has been appointed executor, may issue letters of administration with the will annexed.

And also an Act to authorize common carriers who have transported freight to destination, and are unable to deliver the same in six months, to sell the same at public auction for cash, after publication in a newspaper for four weeks, and to deposit the proceeds of the sale in a state or national bank to be selected by the carrier. Perishable articles may be sold at short notice. Approved December 16, 1878.

ILLINOIS.

The State of Illinois, by an Act approved May 7, 1879, provided that no real estate should be sold by virtue of any power of sale contained in a mortgage, deed of trust or other convey-

ance in the nature of a mortgage, executed after the taking effect of the Act, but that all such instruments should be foreclosed in the manner provided for foreclosing mortgages containing no power of sale, and by judgment of a court of competent jurisdiction.

By another Act, approved May 29, 1879, it is provided that conductors of railroad trains, and the captain or master of any steamboat carrying passengers, within the jurisdiction of the state, shall be invested with police powers while on duty on their respective trains or boats.

MASSACHUSETTS.

The most important Act of a general nature passed by the legislature of this state is an Act approved April 23, 1879, providing a remedy by suit for those having claims against the commonwealth.

The causes to be tried in the same manner in all respects as suits at common law—and if there is a final decision in favor of the claimant, the chief justice of the superior court shall certify the amount found due, with costs, to the governor, who is authorized to draw his warrant for the amount on the treasurer and receiver general.

By another Act, approved March 21, 1879, it is provided that whenever a person arrested on criminal process has been ordered to recognize with sureties for his appearance, he may, instead of giving securities, give his personal recognizance and deposit with the clerk or justice of the court the amount of bail which he is ordered to furnish.

MISSISSIPPI.

The State of Mississippi has passed a very stringent law against the carrying of concealed weapons.

Also providing a summary mode of trying cases of contested elections for county officers before a justice of the peace,

with the right of appeal to the Circuit Court when the case is to be tried *de novo*. The verdict of the jury determines who is entitled to the commission.

MISSOURI.

The last session of the Missouri legislature was the revising session; the revised statutes have not yet been published, and do not take effect until the first of November next, except such Acts as by the provisions therein contained take effect at a different time.

There are a very few Acts of a general nature which take effect before the first of November; amongst them are the following:

By an Act approved April 26, 1879, it was provided that any person being a candidate for election to any office of honor, trust or profit in the state, who shall promise to discharge the duties of the office for a sum less than the salary, fees or emoluments as fixed by the laws of the state; or to pay back any portion of the salary, fees or emoluments, as an inducement to voters at such election, shall, on conviction, be deemed guilty of a misdemeanor, and shall be fined not less than fifty nor more than five hundred dollars, or imprisoned in the county jail not less than ten days nor more than six months, or by both fine and imprisonment, and shall forfeit the office to which he shall have been elected. A spirit of economy had induced the people of some of the counties to elect men to office who agreed to serve for less than the lawful fees or salary, and this law is a reproof of such action.

By an Act approved March 9, 1879, it is provided that no tax shall be assessed, levied or collected in the several counties of the state except the state tax and tax necessary to pay the funded or bonded debt of the state, the tax for current county expenditures and for schools—except under certain limitations and conditions prescribed in the Act, which are as follows:

Whenever the county court of a county is satisfied that there exists a necessity for the assessment, levy and collection of other taxes than those first enumerated, they shall request the prosecuting or county attorney to present a petition to the Circuit Court of the county, or judge in the vacation, setting forth the reasons why such tax should be levied and collected—and the Circuit Court or judge, being satisfied of the necessity for such tax and that the levy and collection of the same will not conflict with the Constitution and laws of the state, shall, by order, direct the county court to levy and collect the tax.

And the judges of the county court are prohibited, under penalty, from assessing, levying or collecting any tax other than those first enumerated, without an order from the Circuit Court, obtained in the manner above described.

This Act was intended to avoid the process of the federal courts requiring the county courts to levy and collect taxes to pay judgments rendered against counties on their bonded indebtedness—there being a conflict in the decisions of the state and federal courts as to the validity of certain county bonds, and as to the power of the counties to issue them.

The United States Circuit Courts for the districts of Missouri, Judges Dillon, Krekle, and Treat, have decided this Act of the Missouri legislature to be unconstitutional and void, as impairing the obligations of contracts, by impairing the remedy in force when the contract was made.

OHIO.

By an Act of the General Assembly of Ohio, approved March 27, 1875, provision was made for the appointment by the governor of three commissioners, to revise and consolidate the statute laws of the state, and it is declared that in performing this duty the commissioners "shall bring together all the "statutes, and parts of statutes, relating to the same matter, "omitting redundant and obsolete enactments, and such as have "no influence on existing rights or remedies, making alterations

"to reconcile contradictions, supply omissions and amend im-
"perfections in the original acts, so as to reduce the general
"statutes into as precise and comprehensive a form as is con-
"sistent with clear expression of the will of the general as-
"sembly—rejecting all ambiguous and equivocal words, and all
"tautology and circuitous phraseology." They are also required to arrange the laws under suitable titles, with reference to the original Acts from which they are compiled, and to make foot notes of the decisions of the Supreme Court upon the same.

The commissioners have been engaged for four years in the work, and it has just been completed, and is to be published in two volumes by the first of December next.

But few Acts of a general nature have been passed by the last general assembly, and none of them particularly noteworthy, except an Act approved March 6, 1879, providing that a court from which any execution or order of sale has issued shall, upon notice and motion of the officer or interested party, punish as for contempt any purchaser of real property failing to pay the purchase money therefor.

PENNSYLVANIA.

The State of Pennsylvania, at the last session of its legislature, enacted but few laws of a general nature which are particularly noteworthy.

An Act approved April 30, 1879, provides for the punishment of tramps by imprisonment for a term not exceeding twelve months.

By another Act attorneys are entitled to a writ of error from the Supreme Court in cases of proceedings against them for unprofessional conduct.

By an Act approved June 11, 1879, it is provided that when a wife has been deserted by her husband, she is authorized to bring suit against her husband, or any one else, without the intervention of a trustee or next friend.

By another Act approved June 11, 1879, it is provided that judgment debtors, or other persons having knowledge, may be examined under oath for the discovery of property subject to execution, after the issuance of an execution and a return of no property found.

TEXAS.

In Texas the bell-punch law has been adopted, to take effect on the 1st of October, 1879.

And by an Act approved April 2, 1879, entitled "An Act to "suppress lawlessness and crime, and to organize a force for "that purpose," the governor is authorized to organize a company of twenty-five men, besides their officers, who are to be armed and equipped, and subsisted by the state; they are vested with certain police powers, and authorized to arrest persons charged with crime; they are to be governed by the rules and regulations of the United States Army, and the articles of war, so far as the same may be applicable.

By an Act approved April 21, 1879, it is provided "that no "deed, mortgage, contract, bond for title or other written in- "strument relating to land, shall be registered or recorded, un- "less it is shown by recitals in such instruments whether the "grantor was married or single at the time he acquired his "interest in the land; if married, the name of the husband or "wife; whether the husband or wife is dead; whether the land "is separate or community land of the grantor, and whether "the grantee is single or married, and if married, the name of "the husband or wife."

On the 28th of July, 1876, an Act was approved providing for the appointment of five commissioners to revise and digest the laws of the state. They made report of their work on the 1st of January, 1879. It was approved. I have not been able to see a copy of the digest, but I may state that the civil code goes into effect on the first of September, 1879. The penal

code and the code of criminal procedure went into effect on the 24th of July last.

VERMONT.

Vermont has passed a law providing for taxing the deposits of savings banks, savings institutions, and trust companies. the tax is to be paid by the companies on account of the depositors.

Also, an Act approved January 1, 1879, providing for mortgages of personal property.

This is the first chattel mortgage law that ever existed in Vermont.

Provision has been made by law for the appointment of two commissioners to revise, redraft, compile, consolidate and arrange in methodical order, the public statutes of the state.

As to some of the states I have not been able to obtain access to the laws passed during the last year. In others, no laws have been passed which have been deemed worthy of special mention, and of the states which hold biennial sessions it so happens that in nearly all of them no session of the legislature was held during the last year.

ACTS OF CONGRESS.

An Act to establish a national board of health, to consist of seven members, to be appointed by the president, with the advice of the senate, and one medical officer of the army, one of the navy, one of the marine hospital service, and one officer from the department of justice, whose duty shall be to obtain information upon all matters affecting the public health; to advise the several departments of the government, the executives of the several states, and the commissioners of the District of Columbia, on all questions submitted to them, or whenever, in the opinion of the board, such advice may tend to the preservation and improvement of the public health.

The Academy of Science is requested to co-operate with them, and they are to report at the next session of Congress a plan for a national public health organization. Approved March 3, 1879.

A joint resolution was passed appropriating $50,000 to pay expenses incurred in investigating the origin and causes of epidemic diseases, especially yellow fever and cholera, and the best method of preventing their introduction into the United States.

An appropriation was made of $250,000 to be set apart as a perpetual fund for the purpose of aiding the education of the blind in the United States, through the American Printing House for the Blind, by Act approved March 3, 1879.

Also an Act was passed at the late session admitting certain women to practise before the Supreme Court of the United States.

Also, an Act providing for taking criminal cases to the Circuit Court from the District Court, by writ of error, where the sentence is imprisonment, or fine and imprisonment, and the fine exceeds the sum of $300.

One of the provisions of the last census Act, enacted March 9, 1879, provides, that if any state or territory shall, by its officers, and according to the rules and forms prescribed by the Act of Congress, take a semi-decennial census, the United States government will pay fifty per cent. of the cost.

And, now, gentlemen of the association, having, in a very imperfect manner, completed the special task assigned me, I have only a few words to say in reference to the general objects of the association as indicated by the wisdom of those who formed it.

We have undertaken to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession

of the law, and encourage cordial intercourse among the members of the American bar.

If we shall prove ourselves equal to this undertaking, we will deserve the gratitude not only of the present but of the coming generations.

It has been said by an eminent English writer that "the "whole story of law—as the story of every other department of "human life—is the story of human error, but also the story of "truth and resistance to error, not to say of triumph over it. It "is by virtue of good laws and not of the bad, that states have "progressed and nations continue to live; and it is because the "vast bulk of the law in all countries, even the worst governed, "has done more to secure human freedom than to impair it, that "civilization has progressed as far as it has."

In securing the adoption of good laws, the members of our profession, as long as they have maintained its honor, have always exercised a greater influence than all other classes in the community combined. Whilst not legislators themselves, they have much to do in directing the wheels of legislation.

From the nature of their calling it becomes their duty to watch the operation of all laws, whether they result from positive legislation or custom, and endeavor to improve them in the interest of humanity. Individual effort may accomplish much, but concerted action will accomplish more.

Public opinion is in this country the source of all laws, whether they appear in the form of customs which arise from the common consent of a people in a community—and which always exist before there is any written law on the subject to which they relate—or from statutes which are enacted by their representatives who are authorized to make laws.

In no country where the English language is spoken can the supreme political authority long persist in counteracting the will of the bulk of the population, no matter what may be the form of government.

But public opinion is so often wrong—the turbulence of human passions and the promptings of individual interest so often urge men to violate the principles of right in the passage of unjust laws, even in the best regulated societies, that untiring effort and unceasing vigilance are necessary to maintain truth and establish justice on a firm foundation. Efforts at social reform, political convulsions and domestic insurrections agitate the sea of public sentiment until the tempestuous waves threaten to sweep away, and do often sweep away, the barriers which protect individual right.

John Stuart Mill has well said: "That in the world of law "no less than in the physical world every commotion and conflict "of the elements has left its mark behind in some breach or ir- "regularity of the state; every struggle which ever rent the "bosom of society is apparent in the disjointed condition of the "part of the field of law which covers the spot; nay the very "traps and pit-falls which one contending party set for another "are still standing, and the teeth, not of hyenas only, but of "foxes and all cunning animals are imprinted on the curious "remains found in these antediluvian caves." (Essay on Bentham.)

It is the business of those who have studied the science of human rights, whether they be on the bench, at the bar, in the social circle, or in the halls of legislation, to see that public sentiment springs from a pure fountain and flows in an unobstructed channel, and that the laws adopted in pursuance of its mandates shall secure to each citizen the fulness of individual existence, and impose so much restraint only upon each as is necessary for the good of all.

PAPER

READ BY

CALVIN G. CHILD.

Shifting Uses, from the Stand-point of the Nineteenth Century.

MR. PRESIDENT AND GENTLEMEN:—By the courtesy of the Executive Committee, the duty has been assigned me of reading an essay before you, upon a subject connected with the objects of this Association: They are stated in the first article of the Constitution to be "the advancement of the science of juris-"prudence; the promotion of the administration of justice and "uniformity of legislation throughout the Union; the uphold-"ing the honor of the profession of the law; and encourage-"ment of cordial intercourse among the members of the "American Bar."

Within this by no means narrow range, I hope to confine myself in addressing you upon the subject of "Shifting Uses, "from the Stand-point of the Nineteenth Century."

Appreciating highly the favor of the committee, whose good-will has manifested itself in so complimentary a manner, I am yet somewhat at a loss how to proceed, and feel that *in limine* I must bespeak your kind consideration and friendly criticism of this, the first essay before the American Bar Association—it is for me to show the way, to open a path, to lead out, as it were, the first company in the regiment on this our first dress parade, and were I not assured of your kindly greeting, that modesty, which is one of the graces of our profession, might well cause me to hesitate before advancing farther.

There is some degree of embarrassment in selecting one's own subject. The barrister's brief suggests antagonism, and a retainer usually presupposes an adversary; but, in choosing a topic for an essay, there is no opposition to encounter, except such as one chooses to create—you can give an opinion and dissent therefrom, making your reasons for each, after the manner of all courts, equally convincing; you can render a verdict and set it aside with perfect composure and the utmost irresponsibility; you become, in short, an involuntary imitator of Mr. Toots, conducting his imaginary business correspondence with unknown mercantile firms, while you vainly search for a feigned issue. I am, however, materially aided in my choice by the position assigned me among the essayists, for, as in all well regulated institutions, it is the invariable custom to deliver the salutatory, if not in an unknown tongue, at least in unfamiliar speech; hence, to a certain extent, my theme is indicated in advance; and, as on our return to our Alma Mater we listen with intent faces to the Greek address, or follow, with enthusiasm, the Latin oration, even in the marvellous pronunciation of the Continental school, yet, if put to the discovery our Greek may limit itself to "*Τὸν δ' ἀπαμειβόμενος προσέφη πολυμήτις Ὀδύσσευς*," and a translation be required when our brother, newly graduated, illustrates agency by "*Ke farkit per ahliume farkit per say;*" so, in addressing you upon "Shifting Uses," I follow the wholesome precedent of suggesting a topic concerning which we can all look wise, and about which few know more than their fellows.

Please bear in mind that this proceeding is entirely *ex parte*, and that although I may have to refer to Henry the Eighth, to do justice to my subject, yet I have brought the present century into immediate juxtaposition. Should I perchance wander from a beaten path, I yet hope to keep myself within constitutional limits.

In the year 1536 the English Parliament, apparently troubled in its mind as to encroachments upon the common law, enacted

the Statute of Uses and Wills, the preamble to which contained, among other clauses, the following:

"Whereas by the common law of this realm, lands, tene-
"ments, and hereditaments be not devisable by testament nor
"ought to be transferred from one to another but by solemn
"livery and seizin, matter of record, writing sufficient, made
"bona fide without covin or fraud; yet, nevertheless, *divers and*
"*sundry imaginations, subtle inventions and practices*, have
"been used, whereby the hereditaments of this realm have been
"conveyed from one to another by assurances craftily
"made to secret uses, intents, and trusts, and also, by wills and
"testaments, sometimes made by nude parol and words, some-
"time by signs, and token, and sometime by writing; and for
"the most part made by such persons as be visited by sickness,
". . . . who, being provoked by greedy and covetous per-
"sons, lying in wait about them, do many times dispose indis-
"creetly and unadvisedly their lands and inheritance, by reason
"whereof" (after reciting many grievances) "other incon-
"veniences have happened and daily do increase among the
"King's subjects to their great trouble and inquietness"

To remedy this state of affairs the statute of Uses and Wills, known as the 27 Henry VIII., chap. 10, was passed, and thus, as Blackstone expresses it, "the statute conveyed the possession "to the use and transferred the use into the possession, thereby "making the *cestui-que* use complete owner of the lands and "tenements, as well in law as equity;" or, as Reeves states it, "By a kind of legal magic, the whole framework of landed "property seemed on a sudden to be changed, and every man "who before had only the use of his estate at the mercy of his "feoffee, was made in an instant the complete and lawful owner "of it."

It would seem that the evils being cured, the common law could rest in peace; but (I follow Blackstone's words) "the "various necessities of mankind induced the judges very soon "to depart from the rigor and simplicity of the rules of the

"common law and to allow a more minute and complex con-
"struction upon conveyances to uses than upon others, and,
"although the Statute of Uses, having in view the protection
"of the people, conveyed the possession to the use and the use
"to the possession, a shifting use was invented by which it was
"held that a use, though executed, might change from one to
"another by *circumstances ex post facto.*"

By this neat shunpike the statute was evaded, and the chancery and common law judges, between them, so badgered and worried the poor common law, that even the uncertain length of the chancellor's foot was a *datum plane* compared with the modifications in store for its future; so that we find Lord Bacon, in 1615, speaking of the Statute of Uses as "a law whereupon "the inheritances of this realm are tossed, at this day, like a ship "upon the sea, in such sort that it is hard to say which bark "will sink and which will get to the haven."

The "divers and sundry imaginations, suitable inventions and "practices" which stood out so prominently as grievances, in the preamble of 1536, a century later were in equal force, although called by a new name, and sponsored by judicial opinions.

We have eminent authority for the statement that the adoption of uses into the English law was "the fruit, first of fraud "and afterwards of fear." The Statute of Uses was in no sense an exception, unless it was all fraud, for certainly the six year parliament of Henry the Eighth inspired no fear in the mind of its gracious sovereign, which should cause him to hesitate, to ask for a statute, in spite of its lying preamble, passed to save the royal wardships by joining possession to use.

Perhaps Henry did not see the preamble, however, for in the year 1536, having found, in Queen Catharine's case, how complicated divorce proceedings were for a monarch of so marked a religious character, that Pope and Cardinals not only concerned themselves as to his spiritual and temporal welfare, but also as to his domestic affairs, he avoided any similar delays by

beheading Anne Boleyn as a summary way of providing the necessary bereavement, which in making him a widower gave him a chance for another wife.

Being thus occupied, he may not have found leisure to read the preamble of 1536, but he doubtless did that of 1541, which preceded the Statute of Wills, for that was an off year in which there was neither divorce nor assassination.

The solicitude expressed by the Statute of Uses in 1536 for testators "visited by sickness and provoked by greedy and "covetous persons lying in wait about them," was manifested in 1541, in the Statute of Wills, but it took quite a different shape, giving as a reason for the statute, that "persons of landed "estates could not conveniently maintain hospitality, nor provide "for their families, *the education of their families*, or the pay- "ment of their debts out of their goods and moveables" (mark the solicitude for general education), and preceded a statute enacting that lands, manors, tenements, and hereditaments could be disposed of as well by will as by an act executed in the testator's lifetime, but nevertheless providing that the king should obtain a full third right of wardships and prima seizin.

The preamble, moreover, thanked the king for his grace and goodness toward his subjects, in granting them everything which he in his benevolence could confer, while the statute made certain the *quid pro quo*.

Whatever benefit or advantage was conferred upon the people as against the king, by the Statute of Uses and Wills, was, by the combination of the Statute of Wills and Shifting Uses, rendered utterly valueless, and Henry, having settled financial affairs to his satisfaction, again turned his attention to matrimonial concerns, and beheaded Catharine Howard in 1542.

But, after all, we can well afford to leave this old scoundrel of a king with his piety (for Catholic and Protestant alike made him Defender of the Faith), his wives, and his greed for wealth and power.

Even his legislation, though interwoven with the very fibre of the English law, is out of place in these days of codification, union of equity and law, and simplicity in criminal pleadings; days of such marked change that ere long we may seek, as of a by-gone time, for relics of that common law of which Blackstone wrote, and on which Mansfield rested his fame.

Out of the evils of Henry's reign good has probably grown in the establishment and regulation of trusts and trust estates; but with that outcome of uses I will not detain you, my purpose being to call your attention to certain instances in which as it seems to me, "the possession having been conveyed to the use, and the use transferred into the possession," circumstances *ex post facto* have so shifted the use that "it is hard to say which bark will sink, and which will get to the haven," as we look at them from the nineteenth century stand-point.

The instances of shifting uses which I ask you to consider with me, and to which I shall refer in this essay, are found:

1. In the jury system.
2. In the tenure of judicial office.
3. In the bread-getting of the profession.

It is no part of my plan to investigate, in the least degree, the history of trial by jury—neither its origin, its antiquity, nor the veneration felt for it by common law writers are pertinent to my view of the system as a "shifting use." I will therefore leave the origin with Alfred unhesitatingly. It is sufficient for us that the system exists, that it is likely to exist, and that by constitutional provisions of the General Government and State Governments alike, it is, so far as questions of fact are concerned, an integral part of our public polity.

When the possession was transferred to the use, and the use to the possession, the trial by jury meant, as defined by Blackstone, a determination by "the unanimous suffrage of twelve of

"one's equals and neighbors, indifferently chosen, and superior "to all suspicion," and it was such a system that Lord Commissioner Maynard enthusiastically denominated "the subject's "birthright and inheritance, as his lands are, and without which "he is not sure to keep them or anything else his fence "and protection against all frauds and surprises, and against "all storms of power." It seems to me that this executed use has so far shifted, that we rarely find a panel of "twelve of one's equals superior to all suspicion."

In Blackstone's time the panel was returned to Court upon the original *venire*, upon which the jurors were to be summoned and brought in many weeks afterward to the trial, in order that the parties might have notice of the sufficiency, insufficiency, character, and relations of those summoned.

In our own time we know so little of our jurors that we designate them by numbers—*exempli gratia:* the fourth juror in the first row, the third juror in the second row, the second juror from the foreman, much as we studied arithmetic, at our first venture, when we counted apples on trees, and apples on the ground, by aid of illustrative pictures. The juryman's *relations* may be our adversary's father and mother, for aught we know, and the determination of his sufficiency or insufficiency a complete illustration of "walking by faith, and not by sight;" indeed sometimes we find, after verdict, that the illustration goes even farther, and learn to our cost "that faith, without works, is dead." An omnibus load of ordinary passengers, in our large cities, if landed in the jury box, furnishes as safe a panel as the twelve provided by the constituted authorities; in average cases, full as likely to do justice, and as little likely to err.

It would be useless to recapitulate instances of my own experience with juries, how an outside issue, or an insignificant circumstance, or an apparently unimportant phase of the controversy has entered into a juryman's deliberations as a controlling

element—useless, for the simple reason that each one of us can draw illustrations from his own practice.

"Let me get one idea into that fellow with a yellow waist-"coat," said Sir James Scarlett, "and the case is safe, for it will "take the idea longer to be dislodged than it did to plant it." He believed in unanimity, you notice.

We have all met the smart juryman, the stupid juryman, the funny juryman, the obstinate juryman, the juryman who sleeps through the trial, and the one who sleeps through the argument, the juryman who takes notes, the juryman who asks questions, and, *horresco referens*, the juryman who knows the law. We leave them on or off, consulting not infrequently prejudice and interest, and then devote ourselves to the study of human nature among our client's hypothetical peers, that we in our turn may be smart, funny, and sometimes perhaps stupid, as the exigencies of the occasion demand. I very much fear that Mr. Blackstone's old fashioned idea of summoning twelve of one's neighbors would simply provoke a challenge for favor when carried into practice.

Regarding this shifting use as an unwise departure, I propose certain lines of thought for the Association as suggesting possible remedies, commending them to your future deliberation. Representing the American bar, there is an influence here which can be felt throughout the land if once exerted, and to that influence I appeal for such action as may be to a degree, if not absolutely, in unison through legislation or otherwise, in the several States.

The remedies I suggest are:

1. A more careful scrutiny of the jury-box, and a higher standard for service as jurymen.

2. Compulsory service, as far as practicable, in fact as well as in theory.

3. Exemption from liability to duty, after service, until a specified time has elapsed.

4. Increase in the number of peremptory challenges, and, above all, fearlessness in the exercise of the right to use them.

5. A decent remuneration for jurymen when drawn upon the panel.

It requires no argument to show the advantage of character in the jury, and such safeguards as will best preserve and retain it; it is to me equally clear that the necessity of a higher standard in the service is shown by every day experience.

Our system stands self-confessed as inefficient whenever an important case goes to a struck jury, for the reason that the distrust of the ordinary panel proves the necessity of a more discriminate selection of triers. It would be a desirable result if every jury rose to the level of struck juries, as from time to time empanelled, and there is no reason why such should not be the case. How this end is to be attained is a matter worthy of our best deliberation—whether the jury-service should be based on property qualification, standing in the community, or known capacity for judgment. One thing seems to me beyond contravention: that it should be absolutely free from opportunity of approach, temptation, or influence; and I know of no safer guaranty of purity than a character which has so earned respect in the daily walks of life as to be deemed worthy of trust among "neighbors and equals," and "superior to all suspicion."

Let such care and precaution be exercised in the creation of the panel that the twelve arbitrators in the jury-box may at least approximate the standard of arbitrators chosen by parties; and however selected, let us at least devise some better method than to empty a directory into a wheel and abide the result of a lottery.

We estimate the value of lands taken in the exercise of eminent domain by arbitrators selected with care; we pass upon the powers acquired to exercise that right by arbitrators chosen at hap-hazard.

If law be "the perfection of human reason," would it not be well to preserve a logical connection between premises and conclusion, when we apply its principles in practice.

The interests of lawyers and clients are one in this matter, and the longer there is delay the greater the danger, lest the evil assume such proportions as to be outside our control; an evil, in my judgment, now within reach of the profession, single-handed, to remedy; and of so grave a character that we owe it to ourselves and to the honor of the bar, that the jury system should be lifted above the possibility of party politics, whither, in certain cases, there seems likelihood of its drifting; and to demand, as long as it is an element in the administration of justice, intelligence, honesty, and character among jurymen, as well as absolute protection in the discharge of jury duty throughout the length and breadth of the land.

It is possible that I misjudge jurors in other States than those in which I have had experience, but I think I will take the risk. Perhaps I should make an exception as to New Haven county, Connecticut, for during a discussion upon a subject germane to the one now under consideration, before our State Bar Association, one of that county's lawyers claimed that New Haven juries were, for the most part, composed of God-fearing men. I recall a similar instance in the case against Mr. Lustings, cited by John Bunyan in his Holy War, where among the jurors we find the names of Mr. Love-God, Mr. Heavenly-mind, and Mr. Zeal-for-God, but as these are the only two instances within my knowledge of panels eminent for piety, what I have said may stand without qualification.

If successful in establishing a higher standard for jury duty, it may be well to consider whether a majority verdict may not be expedient, or whether a verdict to be accepted should necessarily be unanimous. Our Grand Juries have long been conducted on the basis of a majority, practically, though twelve must agree; and on the trial of peers in the Court of Parliament, or Court of the High Steward, the judgment was deter-

mined in the same manner, "*per legale judicium parium morum.*" I am yet somewhat of a doubter as to encroachments on unanimity, but we have only to take up a volume of Otto to satisfy ourselves that a majority can safely decide grave issues.

Permit another suggestion. In Lewis Carroll's story of "Alice in Wonderland," the Knave of Hearts was tried for stealing the tarts made by the Queen. The jury were furnished with slates and pencils, and although Alice could not see any word written upon the slates but "stupid," yet at every fresh bit of testimony the pencils were called into use.

We all rely upon our notes. The charge of the jury is based upon the judge's minutes; a review of a verdict is made deliberately upon a full examination of the evidence in detail, and neither counsel, judge, nor appellate court would risk the performance of their duty without such aids.

But we neither furnish the testimony to the jury, nor expect them to take minutes, and look askance at them if they do. We ask them, at the end of a protracted trial, to recollect all that is said, or else take for granted the accuracy of our summing up, shown by our adversary to be as unreliable as a broken reed.

The character of Alice's jury might have been improved, but assuming such a change, the slate and pencil is perhaps not a bad idea. Restrictions of such a nature, which we impose upon juries in the attempt to keep them impartial, are possibly better omitted entirely.

Second.—It is within the experience of us all that those best qualified for jury duty are the first to shirk it.

It is very inconvenient to lose time; it is annoying to be compelled to attend court when business or inclination are in opposition; and so an earnest excuse, or the payment of a penalty, or a bit of favoritism, absents many who should, of all others, be present.

Your well-to-do citizen, who regulates, with precise judgment, the affairs of corporations, and superintends millions of

capital in the busy work of labor, as a general his army, savagely berates the jury which fastens a round sum in damages upon him, out of sympathy for Jane Doe, Administratrix; your restless speculator, whose influence is felt from Wall street to Washington, swears in a louder tone than any call for stocks, if a stupid jury holds him to a contract he never made; neither of these gentlemen, however, deems a jury summons of the least consequence; they send word to their attorney, whisper to a judge, or draw a check for a fine.

The eminent jurist who presided in Bardell *vs.* Pickwick, as reported by Dickens,* known to us as "the little judge," would not excuse the chemist whose assistant knew not the difference between oxalic acid and Epsom salts, notwithstanding the gloomy prospect of untimely deaths in consequence. Although the application of the rule was somewhat severe, yet the ruling itself furnishes an excellent precedent.

Until the courts hold all jurymen to their work, and insist upon the attendance of the eminently respectable alike with their more humble yoke-fellows, as a positive obligation due to the State, no more to be disregarded than a *capias* to testify, or compulsory attendance upon military duty, we cannot expect to restore this use to the possession and neutralize the evil effect of *ex post facto* circumstances.

Third.—There is a class of jurymen infesting smaller communities, known by the regularity of its attendance. Such a juryman is always experienced, always acquainted with counsel, generally with the witnesses, and on friendly terms with the court. He brings up, from the storehouse of his memory, many notable trials, and compares them with the one in hand; he contrasts counsel with others, perhaps more eminent, and analyzes your argument by the test of his experience; he never disagrees with the court, but as *amicus Curiæ*, in the jury room, is oracular as to the charge, suggesting, parenthetically, how

* Pickwick Papers, *cap.* xxxiv.

the chief justice put the point at such and such a time. He is like an intermittent spring, now clear and sparkling upon the surface and now utterly lost to sight, reappearing when least looked for, following the trial as it may best suit himself without the least reference to or concern for others or others' ideas. He is apt to be the twelfth juryman when the eleven disagree with him, and is then tenacious as to his own views, and, if convinced against his will, seldom yields till there is danger of an all night session.

Exemption from service during stated periods banishes this juryman from court.

Until recently the United States statutes required jury service at but one term in a period of two years, and made attendance more frequently a ground of challenge—a statute which it would have been wise to retain; repealed, as I understand, by the new judicial expense bill; why, it is difficult to conceive.

From the professional stand-point its bearing on national questions is not very apparent, and if any statute was to be offered up to appease the wrath of statesmen, it seems to me that section 5239, which, solemnly re-enacted in the revision of 1873, provides that "the benefit of clergy shall not be used "or allowed upon conviction of any crime for which the pun-"ishment is death," might have been spared without serious detriment.

It certainly could not have been retained to hang a "literary feller" and exempt him from imprisonment for a term of years; or because, by ancient law, the benefit of clergy was given to those "having place and voice in parliament, even though they could not read, for the crime of horse stealing;" I am inclined to the opinion that it was re-enacted for the reason that "the benefit of clergy" had its origin "from the pious regard paid by Christian princes to the church in its infant state," a sort of statute to pious uses, on behalf of national legislation, which

would lead us to expect better things of them than withholding appropriations from district attorneys.*

I, however, suggest for our state practice statutes limiting service, as calculated to benefit both litigants and jurymen, by modifying this characteristic of permanence in the panel; litigants, by securing less prejudiced triers; jurymen, by relieving them to some extent of an onerous duty.

Fourth.—Two peremptory challenges, I believe the usual number in most States, avail but little. One frequently sees a juryman much less objectionable than others, yet undesirable, after his challenges are exhausted, concerning whom he can only say:

> "I do not like you Doctor Fell,
> The reason why I cannot tell;
> But this one thing I know full well,
> I do not like you Doctor Fell."

Challenge, at option, of course within proper limits, is in my judgment, an inseparable incident in securing a trial by one's peers.

By the United States statutes, in capital cases, or when imprisonment is for life, the defendant has ten challenges, the government five; in felonies the government three, the defendant five; in misdemeanors and civil cases each party three. Such discriminations do harm. The true course is not only to establish the number of peremptory challenges in all cases, but to make it uniform. The right of challenge, however, avails little if the profession hesitates to use it. In some of the counties of my state, we tell the clerk quietly what jurymen to excuse, a very cowardly way, I confess; in all states we hesitate to offend a juryman who may serve in the next case. Nothing moves the average juryman more to the depths of his nature than a challenge of this kind, and it is only from united action among us lawyers that the jury will learn that a peremptory challenge is a right of a party with which they have no concern whatever.

* *Quorum.....pars fui.*

Fifth. The usual per diem of a juror, except in cities, leaves him out of pocket when his expenses are paid—in cities, he is out of pocket by the loss of his time. If he is other than scrupulously honest, he is simply led into temptation, by being summoned to Court. The late Judge Grover once said to me that a judge, in respect to his salary, should repeat Agar's prayer, "Give me neither poverty nor riches"—the rule is applicable to jurors; we do not need to make it an object for them to serve, but we can at least pay them fairly enough to allow them to choose their own hotel without haggling as to price—and relieve, in a measure, the burden of compulsory attendance upon other men's business.

It is not so very long ago that judges were mere creatures of the sovereign power and dependent upon its caprice.

The use to which I refer now, came into possession under George III., and in the first year of his reign, A. D. 1760.

We can afford to give the last king of America all praise for his message to parliament, informing them that "He looked upon "the independence and uprightness of the judges as essential to "the impartial administration of justice, as one of the best se- "curities of the rights and liberties of his subjects, and as most "conducive to the honor of the crown," and due credit to the parliament which enacted full salaries to judges during continuance of commissions and the holding of office during good behavior.

Had George continued as he began, there might have been no taxation without representation, and no United States of America.

We retain the admirable provisions of the English Act in our National Judicial System, but in many states the use has shifted, owing to *ex post facto* circumstances.

It is foreign to my purpose to speak of the *manner* of judicial appointments, a subject on which there is much difference of opinion; I may say, in passing, however, that an elective

judiciary finds strong argument in its behalf, when, independent of political affiliations, an upright judge is retained in office. The judicial district within whose limits we meet to-day, furnishes a bright example in thus honoring one of blameless life, whose spotless integrity and eminent ability are universally recognized, abroad as well as at home. I limit myself to judicial tenure and the expediency of its determination by a term of years.

We elect a judge say for a period of ten years—he goes on to the bench, if you please, for illustration's sake, at forty, his fiftieth year finds him on the eve of retirement from a position in which his entire method of thought has in a great degree changed, to again seek the uncertainties and encounter the perplexities of active professional life, to which he must, to a large extent, re-adapt his tastes, his habits, and his studies.

It is a long step from the balancing of questions with judicial analysis, to the forensic appeal which makes the advocate, or even to the nearer difference which characterizes the argument *in banc*, but the only alternatives for the judge are retirement or candidacy for re-election.

He meditates upon the problem, concludes he will remain in office, and informs a very few friends of his determination.

His election, however, depends upon that peculiar American institution known interchangeably as the caucus or the primary.

Tom Jones and Squire Western run the caucus; that is well known. If they bring up their forces and name a candidate, whether by the force of lungs *viva voce*, or by the show of hands in a count, any other candidate goes to the wall.

Now, if our judge is called upon to preside in the case of Jones *vs.* Bilfill, in which Squire Western is a stiff swearer, the week before the caucus, is it very strange if the caucus occasionally creeps into the judicial mind through the interstices of self-interest, however carefully guarded such crevices may be in

intention? We err often unwittingly, through the weakness of poor human nature, and our judge, though his joints be of tempered steel, at times unconsciously bends the knee that "thrift may follow fawning."

But if our judge's lot is in a less serene atmosphere, and the caucus is managed by Michael O'Shaughnessy and John McQuirk —worthy gentlemen, but phlebotomists in politics—do you wonder that a check goes to his friends after the nomination is made, solely for the good of the cause and for strictly legitimate expenses, of course; and our judge, secure of party support, abandons the idea of selecting offices, or a partner, and consults the county authorities as to a new carpet for his chambers.

In the degree that the bench is removed from the possibility of bias, it is necessarily the more impartial; in the degree that it is removed from the possibility of influence, it is necessarily the more independent; in the degree that it is removed from the possibility of suspicion, it is necessarily the more honest. On its impartiality, its independence, and its honesty, depend the integrity of the judge, the purity of the profession, and the safety of the commonwealth.

The bar and the bench, as they administer justice, with no diversity of interest, protect on either side the public prosperity. Like mountain ranges they stand on firm foundations, the one over against the other, enduring the same storms, sharing the same sunlight, watched by the same stars; between them lies the peaceful intervale where rivers flow, where meadows green in verdure charm summer beyond its time, and hamlets and villages rest secure; break down either barrier, and tempests sweep through the valley stern and pitiless.

We believe in "whatsoever things are pure, whatsoever "things are honest, and whatsoever things are of good report." In their name I urge judicial tenure for good behavior as "one "of the best securities of the rights and liberties of the people "and as most conducive to the honor of the republic."

The third and last instance I shall refer to, in which the

possession has been conveyed to the use and the use transferred into the possession, and the nineteenth century had its effect thereon, relates to the manner in which lawyers charge for services rendered to clients, which I have elsewhere denominated bread-getting.

I am aware that I tread on dangerous ground, but I am none the less persuaded that a shifting use exists in our pecuniary relations to the public, which the profession may profitably consider.

It is not my purpose to underrate the value of legal talent, nor to question the worth of the learning and experience, wrought out from years of arduous labor and painstaking research, which necessarily goes before the capacity to earn fortunes by those who have won the silk gown of precedence.

Indeed, I am forcibly reminded at this point of a decision by the Connecticut Supreme Court of Errors. The questions under consideration arose on a *quantum meruit* count, in an action of assumpsit for professional services; in giving the opinion Judge Foster says: "In the first place, there is a diversity "of gifts"—to this sentiment we can all say Amen.

And further, it seems to me, that Mr. Jagger's mode, as described in "Great Expectations," had a deal of sense in it: "'Now, I have nothing to say to you,' said Mr. Jaggers, "throwing his finger at them, 'I want to know no more than I "'know; as to the result, it is a toss-up; I told you from the "'first it was a toss-up; have you paid Wemmick?' 'We made "'the money up this morning, sir,' said one of the men, sub-"missively. 'I don't ask you when you made it up, or where, "'or whether you made it up at all. Has Wemmick got it?' "'Yes, sir,' said both the men together.' 'Very well, then, "'you may go; if you say a word to me I'll throw up the "'case.'" How very convenient to have Wemmicks making sure of the fees on the threshold of our labors.

Therefore, Mr. President, I beg you to believe me sound on the main question.

In 1742 Lord Chancellor Hardwicke expressed himself as follows (Thornhill *vs.* Evans, 2 Atkins, 332): "Can it be thought "that this court will suffer a gentleman of the bar to maintain "an action for fees, which is *quiddam honorarium?*"

In 1841 (Adams *vs.* Cagger, 26 Wend., 452) Mr. Senator Verplanck, giving one of the opinions of the majority of the court, says: "In a land wedded to old usages, we know that "habit or prejudice may still keep up a distinction in form that "has long ago passed away in substance, and thus compel the "counsellor and the licentiate physician to look only to their "honorary fees, whilst the surgeon or solicitor may sue for his "bill; but in our bank note world, on this side of the Atlantic, "and in an age when the greatest poets or novelists are willing "to confess that they toil 'for gain, not glory,' it is ridiculous "to attempt to perpetuate a monstrous legal fiction, by which the "hard working lawyers of our day, toiling till midnight in their "offices, are to be regarded in the eye of the law in the light "of the patrician jurisconsults of ancient Rome, when

> ——'dulce dici fuit et solemne reclusa,
> Manu domo vigilare, clienti promeri jura;'

"and who, at daybreak, received the early visits of their humble "and dependent clients, and pronounced with mysterious brevity "the oracles of the law." If Mr. Peter Cagger, defendant, was not satisfied with this opinion, he was a very hard man to suit.

In view of these quite diverse precedents, the question I wish to bring before the bar is this: Ought not a limit to be placed upon speculative charges, and restrictions other than "silence" be thrown around the plan of "addition and division?"

Most lawyers' offices, outside of the very large cities, receive, on an average about once a month, a polite request from some collecting agency for an offensive and defensive alliance, based upon the idea that "if I tickle you, you will tickle me."

Any fee received is to be equitably divided; no charge is to be made unless successful results are obtained, and reliance for

remuneration in the long run is placed upon the eminent respectability and large influence of the clientage subscribing; while, lest any but the elect may be brought in contact, it is essential that every member of the bar participating in these advantages should be recommended by a judge or by a bank.

This hook is too thinly baited to catch many fish, but the attempt at angling is the legitimate result, in my opinion, of the latter day tendency to make the profession a trade.

In this speculative age the temptation to bargain is not easily resisted by clients, and the attorney who can shrewdly dicker outstrips those lawyers who regard practice as on a higher plane than a mere selling race.

I understand a member of the bar, in a certain city (say Calcutta for locality's sake), is in the habit of sending his card to any person injured on railroads, or to their representatives in case of death, accompanied with a polite intimation that he will bring an action for damages on his own responsibility provided the amount recovered is equally shared. It is growing to be a not infrequent custom to apply a similar rule, though not the same manner of announcement, in all cases whether they sound in damages or not.

I need not refer to the evils which grow up with such a system; they are self-evident. Speculation is not troubled with conscience, nor self-interest with afterthought, and when the end justifies the means, the means are apt to adapt themselves to the end.

Where efforts and service are faithfully bestowed, the laborer is worthy of his hire; it is unjust to leave him without compensation should his efforts fail of success, and it is useless to establish bar rules and maintain bar associations, if they are to be mere theoretical abstractions, disregarded in practice.

Neither speculation nor self-interest furnish excuse for departure from the honor of the profession; maintenance is not utterly beyond reproach, though some judges seem to regard it as proper for us to "first endure, then pity, then embrace," and

I know of no better rule than that given by Chief Justice Parker, in Thornton *vs.* Percival, 1 Pick., 417: "It sometimes may be "useful and convenient, when one has a just demand, which "he is not able from poverty to enforce, that a more fortunate "friend should assist him and wait for his compensation until "the suit is determined, and be paid out of the fruits of it;" but beyond this we cannot safely go.

If it be that sharpness and shrewdness in trade is essential to professional success, a different training is necessary than that which most of us have had, and the sooner we know it the better; the "*quiddam honorarium*" may be a relic of the past, but I submit to you whether the objects of this association are the better served by adhering to ancient traditions, or by encouraging traffic.

In the suggestions made, brethren of the bar, I have endeavored to call your attention to some of the needs of the profession, in the hope that at least they may so far commend themselves to your favor that each may ask himself the question: "What are you going to do about it?" I have perfect faith that the answers will be for our common good. I might have limited myself to less general topics, and individualized my subject, for we all have our specialties, even if we never have a chance to practice them. My unfinished treatise on my favorite theme rests secure, abiding "the more convenient season," which so seldom is found in the bustle of our active lives, destined, I fear, to no better fate than awaited Mr. Pembroke's sermons in Waverly—the permanent seclusion of the author's desk. But, had I read to you my graver thoughts, it would perhaps have been out of place, for when the "master bowmen" are so soon to enter the lists, it suffices me to "pierce an outer ring."

Evils grow about every system; barnacles fasten upon the proudest ship; the sharpest blade gathers rust; the surest rifle will sometimes foul; but the best evidence of care is in the curing, and if so be that the ship must be scraped, or the blade burnished, or the rifle cleansed, even if barnacles, rust, and foul-

ness yield only to heroic treatment, the more earnest the effort, the surer the result.

So with our profession. At times we find it needing care and thought, lest things extraneous gain a foothold; but it is always the better, if we honestly acknowledge our fault, and honestly correct it. I recognize no calling more noble, none more worthy, none where veneering is so seldom mistaken for solid wood, and none where the reward of ambition is more surely given to desert and merit.

The pawn reaches the king-row step by step, and by plodding effort gains royal power, but, when gained, it is only laid down with life.

" A lowly one I saw,
With aim fixt high;
Nè to the righte,
Nè to the lefte
Veering, he marchèd by his law;
The crested knighte passed by,
And haughty surplice-vest.
As onward toward his heste,
With patient step he prest,
Sooth faste, his eye—
Now, lo! the last door yieldeth,
His hand a sceptre wieldeth,
A crowne his forehead shieldeth.

So, mergeth the true hearted,
With aim fixt high,
From place obscure and lowly,
Veereth he naughte,
His worke be wroughte.
How many loyal paths be trod,
So many royal crowns hath God!"

Two hundred years have passed since Thomas Jackson wrote his "Game of Chess;" its lesson is immortal.

PAPER

READ BY

HENRY HITCHCOCK.

The Inviolability of Telegrams.

What limitations exist, if any, upon the power asserted by the courts to compel a telegraph company, by a subpœna *duces tecum*, in proceedings to which it is not a party, to search for and produce in evidence private telegraphic messages remaining in its possession, is a question which cannot be said to have been satisfactorily determined.

Pending its authoritative solution by the courts of last resort, or by appropriate legislation, it is the object of this paper to call attention to the present aspect of the controversy, the laws now in force which bear upon it, and some further considerations which appear to have been overlooked, or at least imperfectly presented.

Five American cases in all are reported* in which the question of the compulsory production of telegrams in evidence has been to some extent judicially considered. In each one of these the court overruled the objections urged against the power invoked; but the questions actually decided in the several cases were by no means equally broad. In only one of them (ex parte Brown, decided April 28, 1879, by the St. Louis Court of Appeals) was fully argued and expressly asserted the power of the courts, by the writ of subpœna *duces tecum*, to compel the local manager of a telegraph company—against its protest, and

* Henisler *vs.* Freedman (1851), 2 Pars. Sel. Cas. 274; *s. c.*, Allen's Tel. Cas. 1; The State *vs.* Litchfield (1870), 58 Me. 267; *s. c.*, Allen's Tel. Cas. 494; National Bank *vs.* National Bank (1874), 7 W. Va. 544; United States *vs.* Babcock (1876), 3 Dill. 567; ex parte Brown (1879), 8 Cent. L. J. 378.

notwithstanding a penal statute of Missouri forbidding telegraph employees to wilfully divulge the contents of any private dispatch, except to the person addressed—to search for and produce in court, in proceedings to which the company was not a party, all private telegrams remaining on its files which had passed between persons named in the subpœna during six months preceding, neither the relevancy nor the competency of which was first made to appear. The grounds of this decision will be presently stated. As it will doubtless come before the Supreme Court of Missouri for review, it cannot be regarded as final even in that State.

The other four cases cited were of narrower scope, the relevancy of the telegrams called for being shown, admitted, or assumed in the decision of each. In United States *vs.* Babcock,* the only question decided on this head was, whether the subpœna there issued was sufficiently certain in describing the dispatches required. The remaining three turned chiefly upon the construction of local statutes, or the claim that telegrams, *as such*, constitute a new and distinct class of privileged communications.

Of English decisions, only four are pertinent. In Waddell's Case,† decided in Newfoundland in 1861, and Ince's Case,‡ in 1869, by the English Court of Common Pleas, both very briefly reported, the production of telegrams by private telegraph companies was enforced. On the other hand, in two English election cases,§ in 1874, the court refused to compel the production of private telegraphic dispatches by the government postal-telegraph officials, on the ground that the government, in assuming exclusive control of the telegraph service, had invited a confidence on the part of private persons sending messages which it was against public policy to violate.

* 3 Dill. 567.

† 8 Jur. (N. S.) pt. 2, 181; *s. c.*, Allen's Tel. Cas. 496, note.

‡ 20 L. T. (N. S.) 421; *s. c.*, Allen's Tel. Cas. 497, note.

§ Stroud Case, 2 O'Malley & H. (Elect. Pet. Rep.) 72; Taunton Case, *Id.* 112.

A like power has been more than once exercised by legislative bodies in the United States; as, by the House of Representatives of Mississippi during the impeachment of Governor Ames, at the session of 1876, and notably in the case of Barnes, by the House of Representatives at Washington, in January, 1877, shortly before the institution of the electoral commission.

As the report of the House Judiciary Committee,* declaring Barnes guilty of contempt, and the opinion of a majority of the St. Louis Court of Appeals in *ex parte* Brown, furnish the best, if not the only statement of the grounds upon which the unqualified power in question has been maintained, a brief account of these cases, and of the arguments presented in opposition, will present the controversy as it now stands.

Barnes, the Western Union Telegraph manager at New Orleans, was brought to the bar of the House on January 5, 1877, for an alleged contempt, in that he had refused, when testifying as a witness before the Louisiana Affairs Special Committee, to produce certain telegrams described in a subpœna *duces tecum* served on him December 13, 1876, by direction of the chairman of the committee, as "all telegrams sent "or received by William Pitt Kellogg, S. B. Packard [and six "other persons named], at the office of the Western Union "Telegraph Company, New Orleans, from and after the 15th "day of August, 1876." He appeared also by counsel,† and answered in an elaborate protest and argument, which, besides objecting to the form of the subpœna, and its service upon a subordinate, instead of the governing officers of the company, denied "the right or power even of the judicial tribunals of the "country to compel the production of private telegraphic mes-"sages under the writ of subpœna," upon grounds which were in substance, the following:

* See full report of proceedings in Vol. V., pt. 1, Cong. Rec. (44th Cong., 2d sess.), pp. 452–455, 602–608, 678, 694.

† Grosvenor P. Lowrey, Esq., of New York.

1. That under the instructions of his superiors, he was not at liberty to search, or permit search, among the files in his custody for the "campaign messages" called for by the chairman of the committee, the subpœna not overruling his obligations as an employee.

2. That for the reasons of public policy stated by Judge Cooley (Const. Lim. 306, 307, note), no such demand could lawfully be enforced against him, or any agent of the company.

3. That a judicial or other subpœna, couched in such general and sweeping terms, would be in effect a *general warrant*, within the prohibition of the fourth amendment to the Constitution of the United States, and in violation of the great principles established in Wilkes's case, Entick *vs.* Carrington, and similar decisions (2 Wils. 151, 275).

4. That in obeying the subpœna he would subject himself to punishment under the penal statute of Louisiana, which forbids all telegraph employees to "reveal, make use of, or make public "any dispatch;" and that the House had no power to interpret, modify, abrogate, or protect the witness from such statute.

The whole matter was referred, without debate, to the House Judiciary Committee, who, one week later (January 12, 1877), through the Hon. Proctor Knott, chairman, made a report, reviewing the witness's answer at length, and declaring that in refusing to produce the telegrams in his possession, and so required of him, he was guilty of a contempt. The following, in substance, were the propositions relied on by the committee:

1. That telegraphic messages, *as such*, do not constitute a class of privileged communications, and that no special privilege was shown to attach to the telegrams in question; citing, in opposition to Judge Cooley, the cases of Henisler *vs.* Freedman,* and The State *vs.* Litchfield.*

2. That the witness could not excuse himself for not producing telegrams actually in his possession, by alleging contrary orders from a superior, or that he held them merely as an employe; citing Amey *vs.* Long, 9 East, 473.

3. That the English election cases† referred to were irrele-

* Cited *supra*.

† Stroud Case and Taunton Case, cited *supra*.

vant, the court there refusing to violate the confidence invited by the government itself in establishing the postal telegraph—the circumstances being thus essentially different.

4. That the Louisiana statute furnished no excuse, since the production of telegrams by the witness in obedience to lawful authority would not be a wilful violation of such statute, nor punishable as such (citing Lee *vs.* Birrell, 3 Camp., 337, and Waddell's Case, 8 Jur. (N. S.) pt. 2, 181); and that the power of the House, under the Constitution, to institute investigations, and to compel testimony, and the production of any paper necessary to render the same effectual, was unquestioned, and any State statute in derogation thereof void.

5. That, without discussing at length the constitutional question presented by the witness, "it is, perhaps, sufficient to say "that in the hundreds of instances in which the subpœna *duces* "*tecum* has been resorted to [in English and American courts "and legislatures], the similarity which the witness supposes to "exist between that writ and the 'general warrants' condemned "by the constitutional provision cited by him has never yet "been detected." This, it may be remarked, was the only argument or reply made by the committee on that somewhat important branch of the question.

6. That the opinion of Judge Dillon (Treat J., concurring) in the case of The United States *vs.* Babcock (3 Dill., 567) furnished a most complete answer to the witness's objections to the subpœna, "and the correct rule, and the one which has "been followed by the committee in this instance." In this part of their report, the committee must be understood as referring exclusively to the objections made by the witness as to the *form* of the subpœna, and the sufficiently certain description of the papers therein called for. Nothing else was considered or decided in that case.*

* The rule stated by Judge Dillon in the case cited was as follows: "The "papers [called for by the subpœna] are required to be stated or specified only "with that degree of certainty which is practicable, considering all the circum-"stances of the case, so that the witness may be able to know what is wanted "of him, and to have the papers on the trial, so that they can be used if the "court shall then determine that they are competent and relevant evidence." In the same opinion the court expressly stated that the materiality of the telegrams called for was *prima facie* established by the official averment of the

Upon the reception of this report, Mr. Knott offered a resolution adjudging the witness to be in contempt of the House, and ordering him into close custody till he should obey the subpœna; which was at once adopted, under the previous question, without debate,—*yeas, 131; nays, 72; not voting, 87.* Four days later (January 16, 1877) the witness signified to the House his willingness to produce the telegrams;* and, on the recommendation of the Judiciary Committee, was permitted, still in custody, to go to New Orleans for them.†

It will hardly be claimed, under the circumstances, that this action of the Judiciary Committee, and of a minority of the House of Representatives, can be accepted as a judicial authority. It was taken at a time of extraordinary excitement, in connection with political controversies of the gravest character, by a parliamentary and not a judicial body, all parties composing which were deeply interested in the possible results of the disclosures sought. If the doctrine maintained by the House Judiciary Committee is to be upheld by the courts, then, not only each House of Congress, but equally each House of every State legislature is armed with the power, at will, through a committee or otherwise, to compel the production and inspection, at any time, of every private message remaining on file in any and every telegraph office within their respective States,—not as being competent or relevant to any inquiry before it, but for the mere purpose of finding out what evidence, pertinent or not pertinent to such inquiry, the messages there accumulated may disclose.

It is the proper function of the courts to determine the ex-

district attorney; and further observed: "No objection is made on the ground "that these messages are privileged confidential communications; * * * "therefore we need not consider whether there is any ground to suppose that, "in law, the Telegraph Company occupies a different position than would be "occupied by private persons having custody of the same papers." 3 Dill., 570.

* Vol. V., pt. I, Cong. Rec., 678.

† *Id.*, 694.

istence and the limits of any such power, whether asserted by a legislative body or by a judicial tribunal.*

Ex parte Brown was a case arising on a writ of *habeas corpus* sued out of the St. Louis Court of Appeals, in April, 1879. Brown, the petitioner, who was the general manager of the Western Union Telegraph Company at St. Louis, in charge of its local office and files, was served with a subpœna *duces tecum*, issued by the St. Louis Criminal Court, at the instance of the grand jury, then in session, by which he was commanded to appear and testify before the grand jury in a matter pending before them, and also there to produce—

* * * "any and all telegraphic messages, or copies of "the same, now in the office of the Western Union Telegraph "Company, of which you are manager, and which dispatches "and messages are now in your possession and under your con- "trol [here various persons were named as persons between "whom dispatches passed], and any and all telegrams, or the "copies and originals, that may be in your possession, which "may have been sent or received by and between any or all of "the above-named parties within the last six months."

The witness appeared and answered certain questions relating to supposed offences, by persons other than himself, within the jurisdiction. But he refused, after admonition in open court, to produce, or search, or permit search for, telegrams such as called for, alleging in excuse the contrary instructions of the company, and the penal statute of Missouri prohibiting the disclosure, by any telegraph employe, of the contents of any private dispatch to any person other than the one addressed, or to his agent, etc. Being thereupon committed for contempt of court, he raised the question of the power of the court to compel obedience to such a subpœna under such circumstances, by suing out the writ in question.

The case for the petitioner was very fully and ably presented

* Burnham *vs.* Morrissey, 14 Gray, 239.

by the local counsel for the telegraph company,* on grounds very similar to those taken in the Barnes case. It was contended, in substance :—

1. That the witness, being simply a servant intrusted with the mere custody of telegrams sent and received, they were not in his, but in the company's, possession; and that he could not be lawfully required to disobey the strict prohibitions of his superiors against disclosing their contents.

2. That the subpœna on its face did not assert the existence of any such message as therein called for; that the process was inquisitorial, and not judicial, and was in the nature of a search warrant, to ascertain whether, during the past six months, any such papers had existed, and were still in existence.

3. That obedience to the writ would involve the violation by the petitioner of a statute of Missouri making the disclosure, by any telegraph employe, of the contents of a telegram, a penal offence.

4. That the compulsory production and disclosure of telegrams is against public policy; that the telegrams, which of necessity are intrusted to and remain with the telegraph company, are, nevertheless, private papers, and the property of those who send and receive them; and that to compel their production by such a subpœna is in violation of the fourth amendment to the Federal Constitution, and the identical eleventh section of the Missouri Bill of Rights, which alike prohibit "unreasonable searches "and seizures."

5. That the telegraph service of the country, especially since the passage of the Act of Congress of July 24, 1866, concerning telegraph lines (U. S. Rev. Stat., title 65, sect. 5,263, *et seq.*), and the decision of the Supreme Court in the Pensacola telegraph case (96 U. S. 1), occupies a like footing with the postal service as an indispensable means of commercial intercourse; and that every consideration of public policy and of constitutional and primordial right applicable to interference with letters in the mails, applies equally, under like limitations, to the

* Edmund T. Allen, Esq., with whom was Mr. J. G. Lodge, and to whose courtesy the writer is greatly indebted for a perusal of the learned and elaborate argument submitted.

compulsory production of telegrams by the companies or their agents, in matters to which they are not parties; the latter, equally with the former, being in effect an invasion of the "primordial right of free communion" which every free people must jealously guard, and an "unreasonable search or seizure" within the constitutional prohibition.

The views of Judge Cooley on this question were also cited as of great persuasive authority.

The opinion of the court, remanding the petitioner, was delivered by Hayden, J. (Bakewell, J., concurring; Lewis, P. J., dissenting, but filing no opinion), and is reported in the Central Law Journal for May 9, 1879, (vol. 8, No. 19, p. 378).

The grounds of the decision * were, in substance, as follows:—

1. The constitutional provision against unreasonable searches and seizures has little bearing on this case. The evil and illegality which that was intended to prevent was the indiscriminate seizure of all papers which the accused preserved in the privacy of his home, and compelling by force the communication of their contents, thereby constraining the person, so far as the papers availed against him, to become his own accuser. But it expressly provides that even the sanctity of home shall not remain inviolable against the hand of criminal justice.

2. The case is wholly different when, by his own communication to others, a man's thoughts pass into the region of action. No voluntary communication is privileged from compulsory disclosure, if it be not within the classes of privileged communications excepted on grounds of public policy,—as in the case of attorney and client, or husband and wife. All the adjudged cases hold that there is no peculiarity in telegraphic communications, as such, which exempts them or their contents from the process of the courts (citing Henisler *vs.* Freedman, The State *vs.* Litchfield, National Bank *vs.* National Bank, and the other cases cited *supra*). In the case of United States *vs.* Babcock, 3 Dill. 567 (say the court), the question above discussed was not raised.

3. Communications by telegraph are voluntarily made by the sender to the telegraph employee, and are no more entitled to

* Condensed by the writer, but, so far as practicable, in the language of the court.

protection or privilege than any other unwilling disclosure of business secrets. It is different with sealed letters and packages by mail, which, in the fact of sealing, retain the purpose and recognized type of secrecy, and the character of private papers. The analogy alleged between the telegraph and the mail, therefore, does not exist. Nor do the reasons for the statutory protection of letters, while in the mail, apply to dispatches retained in the telegraph office. The transmission of sealed letters, unbroken, is a trust which the government undertakes, and virtually compels their writers to commit to it, and which established custom and good faith oblige it to perform, without violating or permitting others to violate it. The post-office is a department of the government with whose operations the States cannot interfere; but even letters are privileged only while in the mail. As to telegrams, no such trust or custom exists. Senders, receivers, and telegraph company know that, upon due process, the messages which the company takes the risk, and the consequences of keeping, must be produced, for such is the law.

4. The production of telegrams, as of other private writings, must be regulated by fixed and uniform rules. Evidence of this kind should be uniformly admitted, when competent, or uniformly excluded. If courts are to be shut out from the sources of truth afforded by new methods of communication, they will so far fail in the chief purpose of their establishment. In civil cases, where the operation of the writ would be harsh, the power will be exercised, undoubtedly, in the sound discretion of the court. Inconveniences consequent upon the execution of the laws must be endured.

5. To the objection that the subpœna calls for any and all messages which may have passed between the parties named, during the past six months, without reference to facts or subject-matter, and that the papers required are not, therefore, sufficiently or certainly described, a sufficient answer is found in the obligation of secrecy imposed by law upon the grand jury.

6. This is not the case of a mere clerk or subordinate summoned to produce papers not under his control. The corporation may be reached through any agent having, like this witness, the actual control and means of responding to the writ; and contrary instructions do not excuse him.

7. The penal statute of Missouri referred to does not protect telegrams against a subpœna, for it expressly excepts disclosures

made to a court of justice. Even if it did not, there is implied in every such statute an exception in favor of legal process (citing Lee *vs.* Birrell, 3 Camp., 337).

An altogether opposite view to this, as the profession are well aware, has been maintained by Judge Cooley; originally in a note at page 306 of his valuable treatise on Constitutional Limitations, and recently, at more length, in a very earnest article on this subject in the American Law Register for February, 1879. The unqualified ground taken by this eminent jurist will appear from the following extract from the note referred to:—

After saying that "the importance of public confidence in the inviolability of correspondence through the post office cannot well be overrated," he proceeds:

"The same may be said of private correspondence by tele-
"graph. *The public are not entitled to it for any purpose;*
"and a man's servant might, with the same propriety, be sub-
"pœnaed to bring into court his private letters and journals,
"as a telegraph operator to bring in private correspondence
"which passes through his hands. In either case it would be
"equivalent to an unlawful and unjustifiable seizure of private
"papers—such an unreasonable seizure as is directly condemned
"by the Constitution."

The article in the American Law Register, above referred to, maintains the same conclusion with equal emphasis. The argument is based upon considerations of public policy evidenced by, and public faith pledged in, the statutory prohibitions against disclosures by telegraph employees; upon the supposed analogy between correspondence by telegraph and by mail; upon the constitutional guarantee against unreasonable searches and seizures; and the widespread disturbance, scandals, and mischiefs likely to result from enforcing the opposite doctrine. The article concludes with the following summary of objections to what it describes as "the doctrine that telegraph authorities
"may be required to produce private messages on the applica-
"tion of third persons," namely:

"1. That it defeats the policy of the law, which invites "free communication; and, to the extent that it may discourage "correspondence, it operates as a restraint upon industry and "enterprise; and, what is of equal importance, upon intimate "social and family correspondence.

"2. It violates the confidence which the law undertakes to "render secure, and makes the promise of the law a deception.

"3. It seeks to reach a species of evidence which, from the "very course of business, parties are interested to render blind "and misleading, and which, therefore, must often present us "with error under the guise of truth, under circumstances "which preclude a discovery of the deception.

"4. It renders one of the most important conveniences of "modern life susceptible, at any moment, of being used as an "instrument of infinite mischiefs in the community."

It would seem that the learned writer still maintains the inviolability, under any circumstances, of any telegram remaining in the possession of a telegraph company, against a subpœna or other process for its compulsory production in proceedings against or between third parties.

The foregoing is believed to be a fair and accurate summary of the arguments hitherto presented on both sides of this interesting and important question.

It is not surprising that its just solution should be reached only by gradual steps. In the sphere of political and legal science, as in that of physical research, the application to a new state of facts, even of ascertained truths or established laws, is constantly embarrassed by conflicts and exceptions growing out of other truths and laws also having relations with such facts, and which equally refuse to be ignored. The telegraph, as a new means of communication, has its peculiar methods and features, as well as an exceptional growth; and, in solving questions which relate specially to that system, these must be borne in mind.

In the year 1878, according to the American Almanac for

1879, there were in operation in the United States and Territories 97,628 miles of telegraph lines, served at 9,726 offices; and during that year the two principal telegraph companies transmitted very nearly twenty-eight millions (28,000,000) of messages.

But statistics do not adequately express the true functions of those slender wires, which run along every artery of commerce, and search out every remote extremity of the body politic, radiating from the centres of wealth and busy production like the marvellous net work of the human nerves from their ganglia, and, like them, hurrying to and from the outposts of life the ceaseless current of intelligence received and commands to be obeyed. They are the medium by which, with the speed of thought, are transmitted the desires, the purposes, the transactions of every class, the events of every hour, not only from ocean to ocean, but to the ends of the earth.

Such an agency demands, and it has received, recognition from courts and legislatures as a new factor in civilization. Said the Supreme Court of the United States, speaking by Chief Justice Waite (Pensacola Tel. Co. *vs.* Western Union Tel. Co., 96 U. S., 9):

"The electric telegraph marks an epoch in the progress of "time. In a little more than a quarter of a century it has "changed the habits of business, and become one of the ne- "cessities of commerce. It is indispensable as a means of inter- "communication, but especially is it so in commercial trans- "actions. The statistics of the business before the recent re- "duction in rates show that more than eighty per cent. of all "the messages sent by telegraph related to commerce. Goods "are sold and money paid upon telegraphic orders; contracts "are made by telegraphic correspondence; cargoes secured, and "the movements of ships directed. The telegraphic announce- "ment of the markets abroad regulates prices at home, and a "prudent merchant rarely enters upon an important transaction "without using the telegraph freely to secure information. It "is not only important to the people, but to the government. "By means of it the heads of departments in Washington are "kept in close communication with all their various agencies at

"home and abroad, and can know at almost any hour, by in-
"quiry, what is transpiring any where, that affects the interests
"they have in charge. Under such circumstances, it cannot
"for a moment be doubted that this powerful agency of com-
"merce and inter-communication comes within the controlling
"power of Congress, certainly as against hostile State legislation."

The learned chief justice might have added—had it been pertinent to the question in hand—that the five or six millions per annum of telegrams which did not relate to commerce, included certainly the most urgent, and perhaps the most important, part of the private correspondence of the whole country during that period; that of these a large part were of the most confidential character, often veiled in cipher, purposely made difficult (though not always impossible) even for experts to unravel; that in many States the unauthorized disclosure, by a telegraph employee, of the contents of a telegram, is a penal offence, and that in probably every State this protection is by the public believed to exist, and is generally relied on.

Let us now briefly consider the legislation, federal and State, which this new agency has called forth.

By the Act of July 24, 1866 (re-enacted as tit. 65, secs. 5263–5269, Rev. Stat.), Congress granted to every telegraph company then or thereafter to be organized under the laws of any State, the right—not transferable, and conditioned upon its acceptance of all the conditions of the Act—to construct and operate lines of telegraph through and over any portion of the public domain; over and along any of the military or post-roads of the United States; also over, under, or across the navigable waters of the United States; together with the further right to take material for construction from any public lands, and to preëmpt and use as stations, not less than fifteen miles apart, nor to exceed forty acres for each, portions of unoccupied public lands. The acceptance of the Act is to be filed in the postmaster general's office; and the only further conditions are, that government dispatches (including those of the signal service) shall have priority over all others, and shall be sent at

rates to be annually fixed by the postmaster general; and further, that the United States, at any time after July 24, 1871, shall have the right to purchase all the telegraph lines, property, and effects of any or all of said telegraph companies, at an appraised value, to be fixed by arbitration, as therein provided.*

This is the only legislation by Congress, hitherto, relating to telegraph companies, their rights, or obligations.

In the Pensacola Telegraph Case, already cited,† the Supreme Court, construing this Act in connection with the Act of 1872 (U. S. Rev. Stat., sec. 3,964), which established as *post-roads* "all railroads, or parts of railroads, which are now or may "hereafter be in operation," held that the Act of 1866 applied to all railroads whatever in the United States; that it was constitutional, and within the grant of power to Congress "to regu-

* The following has recently been published as an authentic list of the telegraph companies which have filed their acceptance of the Act referred to and are officially recognized by the post office department as within its provisions: The American Submarine Telegraph Company, of New York, N. Y.; International Telegraph Company of Portland, Me.; The Atlantic and Pacific Telegraph Company of New York, N. Y.; Mississippi Valley National Telegraph Company, of St. Louis, Mo.; Western Union Telegraph Company, of New York, N. Y.; Northwestern Telegraph Company, of Kenosha, Wis.; The Franklin Telegraph Company, of Boston, Mass.; The Insulated Lines Telegraph Company, of Boston, Mass.; Pacific and Atlantic Telegraph Company, of Pittsburgh, Pa.; The Atlantic and Pacific States Telegraph Company, of Sacramento, Cal.; the Eastern Telegraph Company, of Philadelphia, Pa.; The Delaware River Telegraph Company, Philadelphia, Pa.; Peninsula Telegraph Company, New York City; The American Cable Company, of New York. N. Y.; Southern and Atlantic Telegraph Company, of Philadelphia, Pa.; International Ocean Telegraph Company, New York City; Missouri River Telegraph Company, of Sioux City, Iowa; Atlantic and Pacific Telegraph Company, of Missouri; New Jersey and New England Telegraph Company; Central Union Telegraph Company, New Orleans: New York Land and Ocean Telegraph Company; Deseret Telegraph Company, Salt Lake City, Utah; American Union Telegraph Company, of New York; American Union Telegraph Company, of Missouri; American Union Telegraph Company, of New Jersey; American Union Telegraph Company, of Baltimore; Baltimore and Ohio Railroad Company; Toledo, Wabash, and Western Railroad Company.

† 96 U. S 1.

"late commerce with foreign nations, and among the several "States," and suspended all State statutes with which it was in conflict. The court further held that the constitutional powers so conferred upon Congress—

* * * "are not confined to the instrumentalities of com- "merce or the postal service known or in use when the Consti- "tution was adopted, but they keep pace with the progress of "the country, and adapt themselves to the new developments "of time and circumstances. They extend from the horse, with "its rider, to the stage-coach; from the sailing vessel to the "steamboat; from the coach and steamboat to the railroad; "and from the railroad to the telegraph, as these new agencies "are successively brought into use to meet the demands of in- "creasing population and wealth. They were intended for the "government of the business to which they relate, at all times "and under all circumstances. As they were intrusted to the "general government for the good of the nation, it is not only "the right, but the duty of Congress to see to it that inter- "course among the States, and the transmission of intelligence, "are not obstructed or unnecessarily encumbered by State "legislation."*

The telegraph system of this country has thus been recognized, both by the Congress and the courts of the United States, as an indispensable agency of commercial intercourse, and for the transmission of intelligence, subject to the control and regulation, and entitled to the protection, of the government. To this extent it is clear that an important analogy exists between the postal service and the telegraph service. Each system is within the grant of congressional powers; each is recognized, and to be protected against any interference or obstruction under color of State authority. And though, as yet, the government has not deemed it expedient to undertake the service of the telegraph, as governments elsewhere have done, it has nevertheless reserved that right, as a condition of valuable privileges offered to and accepted by the private companies which now conduct it.

* 96 U. S. 9.

But here the analogy ceases. Congress has not in any manner prescribed regulations for the conduct of telegraphic intercourse, even to which the government is a party,—except as to its prior right of transmission, and provision against excessive charges,—nor for the protection or secrecy of telegrams, as such. These matters have hitherto been left wholly to the States.

On the other hand, it is commonly known that penal statutes of the United States protect the uninterrupted transmission of communications intrusted to the mail.*

The opponents of the compulsory production of telegrams lay much stress upon the supposed analogy, as to their privileged character, between communications by mail and by telegraph. It is said that the reasons of public policy which protect the former apply equally to the latter. In the argument of *ex parte* Brown, counsel cited from the opinion of Field, J., in *ex parte* Jackson,† the following passage, whose importance justifies its repetition here:

"Letters and sealed packages of this kind in the mail are as "fully guarded from examination and inspection, except as to "their outward form and weight, as if they were retained by "the parties forwarding them in their own domiciles. The "constitutional guaranty of the right of the people to be secure "in their papers against unreasonable searches and seizures, "extends to their papers thus closed against inspection, wher-"ever they may be. Whilst in the mail they can only be opened

* By section 3,891 of the Revised Statutes, it is made punishable by fine and imprisonment for any employee of the post office department to unlawfully detain, delay, or open, or to secrete, embezzle, or destroy any letter, packet, bag, or mail of letters intended for conveyance by mail and intrusted to him, or which has come into his possession, whether it contain any thing of value or not By section 3,892, fine and imprisonment at hard labor are denounced against any person who shall take out of the mail, before its delivery to the person to whom it was directed, any letter, postal card, or packet, though not valuable, with a design to obstruct the correspondence, or to pry into the business or secrets of another, or who shall secrete, embezzle, or destroy the same.

† 96 U. S. 733.

"and examined under like warrant, issued upon similar oath or "affirmation, particularly describing the thing to be seized, as "is required when papers are subjected to search in one's own "household. No law of Congress can place in the hands of "officials connected with the postal service any authority to in- "vade the secrecy of letters and such sealed packages in the "mail; and all regulations adopted as to mail-matter of this "kind must be in subordination to the great principle embodied "in the fourth amendment to the Constitution."*

Now, an argument for the protection of telegrams against compulsory disclosure, based upon a supposed analogy between the postal and the telegraphic service, may seek to build itself either upon the policy of the postal statutes, which protect letters while in transit through the mail, or upon the fourth constitutional amendment (and like provisions in the State constitutions), as expounded in *ex parte* Jackson, or upon both. But these two grounds are quite distinct. The opinion in *ex parte* Brown practically ignores the latter, or constitutional argument, while furnishing a reply to the former, which a brief

* The fourth amendment is in the words following:—

"The right of the people to be secure in their persons, houses, papers, and "effects against unreasonable searches and seizures shall not be violated; and "no warrants shall issue but upon probable cause, supported by oath or affirm- "ation, and particularly describing the place to be searched, and the persons "or things to be seized."

It is hardly necessary to remark, that although the provisions of this amendment to the Federal Constitution have been held by the Supreme Court (Smith *vs.* Maryland, 18 How., 76; Barron *vs.* Mayor of Baltimore, 7 Pet., 243) to apply only to warrants under the laws of the United States, and not to State process, yet similar provisions are found in all but one of the Constitutions of the several States. The single exception is the Constitution of the State of New York, which contains no such provision. It is found, however, in language identical with the fourth amendment, in the "Bill of Rights" enacted as a statute in New York in 1787, and ever since in force; and the statutory requirements in that State touching the issue and service of search warrants yield in strictness to none others. Rev. Stat. N. Y. (5th ed.) 1859, pp. 1040, 1041; tit. 7, art. 3, secs. 32–35. In Bell *vs.* Clapp, 10 Johns., 266, Kent, C. J., speaks of "the checks which the English law, and even which the Federal Con- "stitution have imposed upon the operation of these search warrants, and with "the manifestation of a strong jealousy of the abuses incident to them."

examination of those statutes will confirm. Only two sections are found in the United States postal laws relating to this subject.

Section 3891 of the Revised Statutes forbids post-office employees to "*unlawfully* detain, delay, or open any letter, packet, "bag, or mail of letters intrusted to him, and which has come "into his possession, and which was intended to be conveyed "by mail, or carried or delivered by any mail carrier," &c., &c. This does not establish the absolute inviolability even of letters in the mail, since it implies that there may be circumstances under which a post-office employee might lawfully do either, leaving those circumstances undetermined by the law-maker, and to be ascertained by the courts. No very satisfactory analogy could be based on this for the absolute inviolability of telegrams.

Section 3892 forbids any person whomsoever from taking out of the mail any letter, postal-card, or packet, before it has been delivered to the person to whom it was directed, with a design to obstruct the correspondence, or to pry into the business or secrets of another. In both sections it is also made punishable to "secrete, embezzle, or destroy" any letter, &c., during its transmission by mail; either of these acts being made conclusive, apparently, of the criminal intent.

It is perhaps the latter section upon which is based the argument as to the policy of the postal statutes, that they are designed to assure the inviolable secrecy, as well as the safe delivery, of letters sent by mail. No doubt, if those statutes are obeyed, letters will remain inviolate in the mails, as incidental to their safe transmission and delivery. But the offence which this section proscribes is not *the disclosure of the contents*, nor even primarily the opening or reading of private letters. It consists in *taking out of the mail, before its delivery to the person to whom directed, any letter, postal-card, or packet*, with a design either (1) to obstruct the correspondence, or (2) to pry into the business or secrets of another. Postal-cards carry no secrets,

and disclose their contents to the casual glance. Yet it is equally a crime designedly to obstruct the delivery of a public notice sent by postal-card, as that of the most important and confidential letter, by taking it out of the mail; while to disclose the contents of such a letter, however otherwise the knowledge of them was obtained, is not an offence within this Act, provided the letter itself, while in the custody of the government, was not delayed, opened, or taken out of the mail. Moreover, the protection of the Act ceases instantly with the delivery of the letter to the person addressed, after which no inspection or disclosure of its contents, however unauthorized or injurious, is a violation of this Act. It is evident, therefore, that the intent and policy of the postal statutes is to protect and assure, not so much the secrecy of private correspondence, as *the due fulfilment of a trust voluntarily undertaken by the government in respect of its safe and prompt delivery.* It has undertaken this mode of serving the public, and invites the public confidence in such service; therefore, it will punish any violation of the confidence so invited, any interference with its execution of that trust, not sanctioned by law.

But, in respect of telegrams transmitted by private companies, the United States have undertaken no trust or duty, nor invited any confidence whatever. The postal statutes, therefore, not only do not protect the secrecy of telegrams, directly or by intendment, but they are founded on reasons which, so far as the Government is concerned, furnish no argument, even by analogy, for their protection. Finally, it is difficult to see how any argument can be drawn from the postal statutes of the United States, either directly or by way of analogy, in respect of what is or is not *the existing law of any State,** to be administered by the courts thereof.

This view of the postal statutes of the United States is en-

* That the legislature of any State, in determining what new laws the public welfare requires, may approve and adopt the policy of laws already enacted by other States or by the United States *in pari materia*, is obvious: but this is as obviously a different proposition.

tirely consistent with the doctrine of *ex parte* Jackson,* that sealed letters and packages, *whilst in the mail*, are also protected from violation by the constitutional provision against "unreasonable searches and seizures," though not protected even in the mail (as the court distinctly say) against search-warrants issued in pursuance of law. The test of the constitution is *the unreasonableness* of the search or seizure—a term purposely left undefined, as are the terms "cruel and unusual punishments" and "excessive bail," in the eighth amendment, lest their efficiency should be impaired under circumstances not then foreseen.

Apply this test of *unreasonableness* to the invasion (without lawful warrant) of the secrecy of sealed letters while in the mail. It does apply, for the obvious reason that, when the Government has taken exclusive charge of the postal service, prohibiting private competition under severe penalties,† and has invited, if not "virtually compelled,"‡ every citizen to intrust his sealed private communications to its care, it would be not only "unreasonable," but a breach of faith, shocking to the commonest sense of justice, for it to abuse the confidence thus bestowed in respect of papers accepted by it under the sender's seal.§ Other reasons of public policy, and especially the encouragement of that "free communion" which fosters civil liberty, while it promotes industry and enterprise, justify the Government in assuming the burdens of the public postal service. But the right of the citizen to be protected, in respect of his private communications transmitted through the mail, against "*unreasonable* searches and seizures," clearly rests upon the ground first stated—of the faithful performance of a trust.

* 96 U. S. 733.

† U. S. Rev. stat., sects. 3982–3998.

‡ Ex parte Brown, 8 Cent. L. J. 380.

§ It was on this ground of public confidence, invited by the Government in establishing the government postal telegraph in 1868–9, that Baron Bramwell, in the Stroud election case, 2 O'Malley & H. 100, 112, refused to order the telegraph officials to produce private telegrams in evidence.

In this respect, also, therefore, the supposed analogy fails between the inviolability (except upon lawful warrant) of sealed letters intrusted to the Government, while in transit through the mail, and that claimed for telegrams remaining in the custody of a private corporation. As to the latter no trust whatever has been assumed, nor confidence invited, by the United States.

If, therefore, it be true that the constitutional guaranty against "unreasonable searches and seizures" of private papers does or should protect telegraphic messages, under any circumstances, from the process of the federal courts if the Federal Constitution be invoked, or of the State courts if appeal be made to the constitution of the State, this must be for some reason which, under the circumstances complained of, would make the search or seizure of such messages also "unreasonable" within such constitutional provision. If such reason do not exist, any supposed analogy of communications intrusted to the mail disappears; if it do, the argument from the Constitution is direct, and that from analogy superfluous.

Next to be considered is the legislation in force in the several States bearing on the present inquiry.

It is unnecessary to dwell upon the statutes relating to the formation, the duties, and the privileges of telegraph companies existing in most of the States, or the powers which many of these confer upon such corporations to condemn and appropriate private property for their own business purposes as for a public use. In some few States the electric telegraph has already been enlisted, as it were, in the service of the courts, civil and criminal. In Texas,* Nevada,† California,‡ and Oregon § a warrant of arrest may be transmitted by telegraph, and the telegraphic copy used for service as an original writ. In the three States

* 2 Pasc. Rev. Code, p. 1341 (Cr. Code, art. 6592.)

† 2 Comp. Laws, 1873, p. 317, chap. 121, secs. 3512, 3513.

‡ Penal Code, tit. 14, secs. 619, 639, 640.

§ Gen. Laws 1872 (Deady & Lane), sec. 739 *et seq.*, chap. 58 (Telegraph Companies).

last named any writ or paper requiring service in any civil proceeding may be transmitted by telegraph, and a valid return made on the telegraphic copy; while in Oregon not only may the return of service of a writ sent by telegraph be made also by telegraph, but it is even enacted that any instrument entitled to record may be sent by telegraph, and the telegraphic copy recorded with the same effect as the original; and to this is added the still more extraordinary provision that in such case the burden of proof shall be upon the party denying the genuineness or due execution of the original! Such legislation illustrates forcibly the remarks of Chief Justice Waite upon the importance of this new and extraordinary agency;* but the present inquiry relates only to legislation touching the secrecy of telegraphic messages.

One of the reasons assigned by Judge Cooley† for opposing "the doctrine that telegraphic authorities may be required to "produce private messages, on the application of third persons" is, "It violates the confidence which the law undertakes to "render secure, and makes the promise of the law a deception."

It has been seen that no federal law exists relating to the secrecy of the telegraph. If the foregoing proposition is based upon the assumption that statutes exist in all, or even most of the States, absolutely forbidding telegraph employees to divulge the messages intrusted to them, it is not entirely accurate. A careful examination discloses the fact that among the thirty-eight states of the Union there are eighteen‡ in neither one of which exists any statute prohibiting or restricting the disclosure, by telegraph employees or others, of the contents of any

* Pensacola Telegraph Case, 96 U. S. 9.

† Am. L. Reg. (February, 1879), p. 66.

‡ Alabama, Arkansas, Connecticut, Delaware, Georgia, Kansas, Kentucky, Massachusetts, Minnesota, Mississippi, Nebraska, New Hampshire, North Carolina, South Carolina, Texas, Vermont, Virginia, and West Virginia. The provision heretofore cited from the Texas code relates only to affidavits and warrants in criminal cases, which may be sent by telegraph. The disclosure of these by telegraph employees is prohibited, but nothing is said as to private messages. 2 Pasc. Rev. Code, p. 1341 (Cr. Code, art. 6592).

private message intrusted to them; although in most of these states there are statutes relating in some way to telegraph companies, their privileges and duties, while in a few of them no statute exists affecting such companies at all. In these eighteen states, therefore, this argument wholly fails.

In each of the remaining twenty States some statutory provision exists prescribing secrecy on the part of telegraph employees, but with differences worthy of note.

In the States of California,* Colorado,† Maine,‡ Maryland,§ Michigan,‖ Missouri,¶ Nevada,** New York,†† Ohio,‡‡ Oregon,§§ and Tennessee,‖‖ respectively, the statutes prohibit telegraph employees from *wilfully* disclosing or divulging the contents of private messages, except, in some of these States, to the person addressed, his attorney, or agent; in others, to the person addressed or the person from whom received. In Missouri¶ a further exception is made, "or to a court of justice." In Iowa,¶¶ the prohibition is against "intentionally" disclosing the contents of a private message. In Indiana,*** such disclosure is forbidden, "except to a court of justice, or to a person "authorized to know the same." In Pennsylvania,††† by the Act of April 14, 1851, and in New Jersey,‡‡‡ by an Act literally

* Cal. Penal Code tit. 14, sects. 619, 639, 640.

† Gen. Laws 1877, sect. 777, p. 312 *et seq.*

‡ Rev. Stat. 1871, p. 467, sect. 1, chap. 53.

§ Md. Code, sect. 20, art. 26.

‖ Comp. Laws 1871, secs. 2 640, 7,768.

¶ 1 Wag. Stat., p. 325, sec. 13; p. 507, sec. 51.

** 2 Comp. Laws 1873, p. 313, sec. 3,497, chap. 121.

†† N. Y. Stat. at Large (Edwards), 196, 197 (Laws 1867, chap. 871).

‡‡ 1 Sayler's Ohio Stat. 762, sec. 10 (Telegraph Companies).

§§ Gen. Laws 1872 (Deady & Lane), sec. 739 *et seq.*, chap. 58 (Telegraph Companies).

‖‖ Tenn. Code 1871 (Thomp. & Steg. Comp.), p. 712, secs. 1,322, 1,323.

¶¶ Iowa Code 1873, sec. 1,328, chap. 6, tit. 10, pt. 1.

*** 2 Rev. Stat. 1876, p. 480, sec. 73.

††† 1 Brightly's Purd. Dig. 336, pl. 107. See 2 *Id.* 1,394, pl. 3.

‡‡‡ Rev. Stat. 1877, p. 1,176, sec. 12 (Acts 1855, p. 544, sec. 1, Telegraph Companies).

copied from the former, telegraph employees are forbidden to make known the contents of any dispatch whatever, without the consent of the sender or the receiver, "upon any pretence "whatever;" and these Acts further enjoin upon all telegraph employees, in relation to all telegrams, "the same inviolable "secresy as is now enjoined by the laws of the United States "in reference to the ordinary mail service." The penalty, however, is not annexed, as usual, to the violation of this injunction, but is found in the next section, and (alike in the Pennsylvania Act of 1851, and in the New Jersey Act of 1855, still in force) is directed against any telegraph employee who shall "use, or cause to be used, or make known, or cause to be "made known, the contents of any dispatch sent or received "in this State, or *in any wise unlawfully expose another's busi-* "*ness or secrets.*" The Pennsylvania Act of 1851, however, was amended by a subsequent Act* in some important particulars, which will be separately noticed.

It is pertinent to consider whether statutes like these support such a proposition as that the law has undertaken to render secure the confidence of every sender of a telegraphic message, that its secrecy shall remain absolutely inviolable, even by the process of the courts.

Clearly, no such construction can be put upon the statutes of Missouri and Indiana, since in those two States the injunction of secrecy in terms excepts courts of justice. Omitting Pennsylvania and New Jersey for the moment, the prohibition in each of the other eleven States last named is against the *wilful* disclosure of a message,—the word "intentionally," used in the Iowa statute, meaning the same thing. Can it be said that an operator has *wilfully* disclosed the contents of a dispatch, when in fact he has revealed them because, and only because, required to do so by a court, as a witness on the stand, with the alternative of imprisonment if he refuse? The question is not whether the court would be justified, under such

* Act of May 8, 1855; 2 Brightly's Purd. Dig. 1,394, pl. 3.

a statute, in making or enforcing such a demand, but whether a disclosure made under such circumstances is *wilfully* made, within the meaning of a penal statute? If not, the operator does not disobey the law by making it. But if so, the law contains no such promise nor invites any such confidence in the inviolability of telegrams as alleged; and such seems to be the correct view as to the statutes of the eleven States referred to.

The Pennsylvania statute of 1851, identical with the New Jersey Act of 1855, still in force, was construed immediately after its enactment, in the case of Henisler *vs.* Freedman,* by the Philadelphia Court of Common Pleas. It was held that the Act should be construed as a whole; that it was aimed only at "unlawful exposures" of another's business; that an exposure of business secrets made by a witness, at the command of a court, in the course of the administration of justice, was a necessary and lawful exposure, not being of a privileged communication, which it was also held that telegraphic messages, as such, are not; and the witness was obliged to disclose the contents of a telegram in his possession as a telegraph manager.† Whether this decision be approved or not, it is clear that no absolute or unqualified assurance of the inviolability of telegrams against legal process can be predicated of the Pennsylvania statute of 1851, nor of the identical New Jersey statute of 1855, still in force.

In 1855, perhaps because of the decision in Henisler *vs.* Freedman, a further Act‡ was passed in Pennsylvania, requiring telegraph companies in that State to preserve all original telegrams for three years, and to produce them in evidence whenever duly subpœnaed to do so *by the senders or receivers*, in any court of

* 2 Pars. Sel. Cas. 274; *s. c.*, Allen's Tel. Cas. 1.

† As the telegram called for was identified by description, and the relevancy of its contents to the pending issue was not disputed, this decision covered only two points, viz.: the proper construction of the statute, and the non-privileged character of telegraphic communications, *as such:* which falls far short of the doctrine of *ex parte* Brown.

‡ Act of May 8, 1855; 2 Brightly's Purd. Dig., p. 1349, pl. 3.

justice, or before any legislative committee, *where such court or committee shall decide them to be material to any issue there pending;* except that confidential communications between attorney and client are in no case to be divulged. The courts of that State have yet to determine the effect of this amendment of the Act of 1851; whether, for example, it amounts to saying that the contents of no private dispatch shall be disclosed, even on the witness-stand, unless called for by the sender or the receiver; nor even then, unless its materiality be made to appear.

As to the remaining five States,—Florida,* Illinois,† Louisiana,‡ Wisconsin,§ and Rhode Island,‖—the statutes of the four first named do in terms prohibit the disclosure, by telegraph employees, of the contents of any private dispatch, without using such words as "wilfully" or "unlawfully," or any other qualification. That of Rhode Island forbids such disclosure "to a person not authorized to receive the same,"—a somewhat ambiguous phrase, but which may fairly mean, "any person other than the person therein addressed."

But the question remains, even as to these statutes, whether the doctrine of *ex parte* Brown¶ be not correct,—namely, that, "in the construction of such Acts there is always an implied "exception in favor of legal process," and that, if the company or its employee discloses the contents of a dispatch because commanded by the courts, "the disclosure is the act of the law, not "that of the company." On this ground alone it was held in that case that the production of the telegrams called for would not violate the statutory injunction of secrecy, without reference to the exception in the Missouri Act in favor of courts of justice: citing Lee *vs.* Birrell,** where, notwithstanding the witness (a

* Brush's Dig. Laws Fla. 1871, p. 255, sec. 10. chap. 50.

† Rev. Stat. Ill. 1874, sec. 7, chap. 134.

‡ Rev. Stat. La. 1870, sec. 3763.

§ 1 Stat. Wis., p. 996, sec. 19, chap. 74.

‖ Gen. Stat. R. I. (Rev. 1872), p. 548, sec. 36, chap. 230.

¶ 8 Cent. L. J. 378.

** 3 Camp. 337.

collector of the property tax) had taken an official oath not to disclose anything he should learn in that capacity, Lord Ellenborough held that there was "an implied exception of the evi- "dence to be given in a court of justice, in obedience to a writ of "subpœna," and required the witness to "answer all questions "respecting the collection of the tax, as if no such oath had been "administered to him."

The result is, then, that so far from uniform State legislation assuring the inviolability of private telegraphic messages, even against legal process, we find that in eighteen States of the Union no telegraph company or employee is under any statutory injunction of secrecy whatever; that in fourteen other States the statutory injunction against their disclosing the contents of messages prohibits only "wilful," or "intentional," or "unlawful" disclosures, implying that under some circumstances, presumably including the command of a court, in aid of justice, the disclosure is within the policy of the law, while in two of these States an exception is expressly made in favor of the courts; that, although in five other States such disclosures are prohibited in unqualified terms, yet none of these statutes place telegraphic messages, as such, on the list of privileged communications, nor make any direct reference to legal process, while the courts thus far hold that in all such prohibitions legal process is by reasonable and necessary implication excepted; and that in the State of Pennsylvania alone do the provisions of the statute seem intended to meet the direct question, under what conditions the courts may compel the disclosure of private telegrams in evidence.

It will require different legislation from this to justify the sweeping proposition that the faith of the law-making power is pledged, either by the nation or by the several States, that telegraphic messages are or shall be inviolable, even by the process of the courts.

Such being the present state of the controversy, and existing pertinent legislation, it cannot be said that either courts or

legislators as yet have solved, upon definite and satisfactory principles, the real question under consideration.

The arguments touching the compulsory search for and production of telegrams in evidence, *pro* and *con*, are equally drawn from principles, each of which must be recognized as among the essential conditions of good government. The former assert the absolute necessity of maintaining the right of the courts to compel the production of written as well as oral testimony, when competent and material, as to which the court, and not the witness, must judge; and further, that this right of the courts can admit of no exceptions, other than those limited classes of communications which public policy requires to be uniformly privileged, without reference to their contents or relevancy to the pending issue. The latter insist upon "the right of the people" [guaranteed, but not created, by the Constitution] "to be secure in their persons, houses, papers, and "effects, from unreasonable searches and seizures," and upon not only the manifest *unreasonableness*, but the startling danger to private right and the public welfare, of permitting inquisitorial searches to be made—possibly at the instigation and to serve the ends of a political or business rival, or a personal enemy—into the immense and indiscriminate mass of private, often confidential, correspondence, the accumulation of which in the custody of a private corporation is an exceptional, and perhaps unavoidable, feature of the telegraph system.

Neither side has successfully met the real argument of the other, nor can even deny its weight and pertinency, within proper limits; but neither has reconciled the two by pointing out what those limits are. It remains for the courts of last resort to fulfil that duty in such manner that the current of authority shall not hastily be turned aside from the ancient channels of the Constitution, nor the supposed necessities of public justice be allowed to outweigh other vital considerations of the public welfare.

The fundamental proposition in support of the right thus

maintained for the courts, on the one hand, is one which cannot be questioned for a moment. The case of Amey *v.* Long, 9 East, 473, decided in 1808, turned directly upon the question whether a writ of subpœna *duces tecum* was of compulsory obligation. Lord Ellenborough delivering the unanimous opinion of the Court of King's Bench, upon motion in arrest, after full consideration, said:—

"The right to resort to means competent to compel the pro-
"duction of written as well as oral testimony seems essential to
"the very existence and constitution of a court of common law,
"which receives and acts upon both descriptions of evidence,
"and could not possibly proceed with due effect without them.
"And it is not possible to conceive that such courts should
"have immemorially continued to act upon both, without great
"and notorious impediments having occurred, if they had been
"furnished with no better means of obtaining written evidence
"than what the immediate custody and possession of the party
"who was interested in the production of it, or the voluntary
"favor of those in whose custody the required instruments
"might happen to be, afforded."*

This unanswerable statement of the reason and necessity for such a power has ever since been recognized as the law.† It follows that the burden is upon those who deny the right of the courts to compel, by a subpœna *duces tecum*, the production of telegrams in evidence, to show why, or under what circumstances, this species of private writings should be excepted from the general rule.

It is to be observed, however, that in Amey *vs.* Long, the question was raised and decided only upon the most general grounds. There was no doubt as to the materiality of the paper called for, no suggestion that it was privileged, nor that it was in any way confidential, nor of any inconvenience to any third person from its production, nor that the issue of the writ was improper or improvident upon any ground of public policy.

* 9 East, 484.

† 1 Whart. on Ev., sec. 377; 1 Greenl. on Ev., sec. 558; 2 Tidd's Pr. 806; Bull *v.* Loveland, 10 Pick. 14.

Lord Ellenborough's statement of the rule, therefore, assumed the existence of every condition which could justify the exercise of the power, and simply announced the general principle upon which it ultimately rests. But, even in doing this, he distinguished the case of Miles *vs.* Dawson,* where Lord Kenyon refused to compel a witness to produce a power of attorney in his possession; saying that this case—

* * * "establishes, in principle, nothing more than this: "that there are circumstances in respect of which the produc- "tion of an instrument, required in the terms of a subpœna, "would not be enforced by the authority of a court; which is a "proposition too clear to be doubted. * * * It is in every "instance a question for the consideration of the judge at *Nisi* "*Prius*, whether, *upon principles of reason and equity*, such "production should be required by him; and of the court after- "wards, whether, having there been withheld, the party should "be punished by attachment."

The true doctrine of Amey *vs.* Long is, therefore, by no means an unqualified assertion of the right of the courts to compel the production of papers in evidence by third persons, under all circumstances. Stated with reference to its proper foundation and just limits, it might, perhaps, take some such form as this:

That a court of law, when engaged in administering justice, by determining facts in dispute between parties before it, in order to apply to those facts, when ascertained, appropriate rules of law, has the right to compel witnesses to attend and give competent and relevant testimony in their possession, whether oral or written, touching the facts material to be determined; which right of necessity includes the power to compel such witnesses to produce in evidence private writings or documents in their possession,—not being privileged,—the disclosure of whose contents appears to be a necessary part of the testimony so required.

If this be a correct statement of the doctrine of Amey *vs.* Long, and of the conditions under which it applies, it may serve as a guide in determining the just limits of the power in ques-

* 1 Esp. 405.

tion. When Lord Ellenborough declared that *in every instance* it behooved the court to determine whether "the principles of reason and equity" required the compulsory production of any paper, he certainly intended that unless such conditions were fulfilled the court had no right, in any case, to put forth such a power. Lord Redesdale, speaking of discovery in equity, tersely stated the true functions of courts of law, also, in compelling the disclosure of facts, in saying:—

"As the object of the court in compelling a discovery is either "*to enable itself or some other court to decide on matters in dispute between the parties, the discovery sought must be material* "either to the relief prayed by the bill, or [in suits for discovery "only] to some other suit actually instituted, or capable of being "instituted."*

The arguments against the compulsory production of telegrams have been made vulnerable by a failure to distinguish between those cases in which the power of the court may be legitimately employed to compel the production of evidence called for with certainty, and competent and relevant when produced, and those in which it is invoked for the very different purpose of searching through papers in the possession of third parties in order to find out whether any and which of them can be used in evidence. In the former, the purpose is just, the right undeniable. In the latter, the purpose is inquisitorial and oppressive, and the power at variance with the essential conditions of free government, as well as with fundamental principles of common law and constitutional right. The distinction is a vital one, however difficult its application may sometimes be. It cannot be disregarded on either side without leading to mistaken and mischievous conclusions.

If the opponents of the compulsory production of telegrams had confined their argument to enforcing the constitutional guaranty against unreasonable searches and seizures, it is

* Mitford's Eq. Pl. 306. See Hare on Discovery (2d ed., 1876), 136, chap. 2, sec. 1.

difficult to see how it could have been answered. In fact, in the Barnes case* and in *ex parte* Brown† their argument to that end was not answered, and in no other reported case was this question raised. In the former, the House Judiciary Committee made no other reply to it than the evasive (one is tempted to say, flippant) assertion that, "in the hundreds of "cases in which a subpœna *duces tecum* has been resorted to "[by courts and legislatures], the similarity which the witness "supposes to exist between that writ and the general warrants "condemned by the Constitution has never yet been detected." In *ex parte* Brown, the constitutional argument was treated as scarcely relevant, in virtue of what seems a singularly narrow construction of that constitutional provision, presently referred to.

Unfortunately, the tendency of other arguments employed against the power in question is in direct conflict with the true doctrine of Amey *vs.* Long, and would not only prevent the abuse, but deny under any circumstances the application to telegrams, of the power there asserted,—as, when Judge Cooley lays it down‡ that "the public are not entitled to it" [private correspondence by telegraph] "for *any purpose.*" None of the reasons in support of so broad a statement appear to be sufficient.

For example, an argument is drawn by analogy from the inviolability of letters in the mail. But we have seen that this analogy will not bear examination. If it rests upon the postal statutes, they protect letters only during actual transit in the mail, and this, for reasons which do not apply to telegrams at all. Nor can it be inferred from the doctrine of Ex parte Jackson, above cited,—namely, that sealed letters, *while in the mail,* are within the guaranty of the Constitution as to unreasonable searches and seizures,—because the trust assumed

* Cong. Rec., vol. V., pt. 1, p. 604.

† 8 Cent. L. J., No. 19, p. 378 (April 29, 1879).

‡ Const. Lim., p. 307, note.

and confidence invited by the government, which would make the search or seizure of sealed letters, while in the mail, "unreasonable," do not exist in respect of telegrams remaining in the custody of a private telegraph company. The two English election cases* in which the court refused to compel the production of private telegrams went on the precise ground that, by the establishment of the postal telegraph, the government had invited a confidence on the part of the senders of telegrams which it would be against public policy to violate. If, therefore, the Constitution does protect telegrams from search or seizure, as well as sealed letters *while in the mail*, this must be for some reason independently applicable to telegrams as such; and thus, in that regard also, the supposed analogy fails. Moreover, it is held in *ex parte* Jackson that even sealed letters in the mail are subject to search and seizure, provided the prohibition of the Constitution against "nameless warrants" be observed. It is only "*unreasonable* searches and seizures," whether of persons, houses, papers, or effects, which are forbidden.

So, the argument from the supposed statutory injunctions against disclosure by telegraph employes, if sound, should include all telegrams, under all circumstances. But we have seen that this argument wholly fails in eighteen States, because in neither of them any such statute exists; and the statutes prescribing secrecy which exist in the other States, whether unqualified in terms or not, are fairly susceptible of a construction, and the courts have uniformly construed them,† in harmony with the doctrine of Amey *vs.* Long.

The argument from the confidential character of telegrams as between the parties to them, and the express or implied pledge of secrecy by the telegraph companies, is still less satisfactory. It assumes that the law respects as privileged, with-

* Taunton Case, 2 O'Malley & H. 72; Stroud Case, *Id.* 100, 112.

† Ex parte Brown, 8 Cent. L. J. 378; Henisler *vs.* Freedman, 2 Pars. Sel. Cas. 274.

out regard to their contents or relevancy to the pending issues, all communications which the parties to them intend shall be secret or confidential. It must amount to this, or to nothing. But it is perfectly well settled that no communication, however confidential, or growing out of personal, social, or business relations however intimate, is for that reason protected from disclosure on the witness stand, unless it fall within one of the special or limited classes which the law itself makes privileged for reasons of public policy.*

In truth, all these arguments amount simply to the claim that private telegraph messages, *as such*, without reference to their contents, constitute a new class of privileged communications. But no statute gives color to any such claim, and the courts have uniformly denied it.† In each of the cases cited ‡ the telegrams called for were specified, and were shown or admitted to be relevant. In none of them was the constitutional question raised. The controversy was narrowed in all of them to the single question, whether a private message, the fact and contents of which are confessedly relevant to pending issues, and otherwise competent, is to be classed with privileged communications,—such as those between attorney and client, husband and wife,—on the sole ground that it was transmitted by electric telegraph, instead of by letter, or by word of mouth. The decision was necessarily against such a claim. The familiar reasons of public policy which make certain classes of communications uniformly privileged, without regard to their nature or contents, obviously have no application to telegraph messages *as such*. Said the court in Henisler *vs.* Freedman:— §

"The wife and husband are not permitted to testify against

* Whart. on Ev., sec. 607; Corps *vs.* Robinson, 2 Wash. C. Ct. 389; Burnham *vs.* Morrissey, 14 Gray, 240.

† Henisler *vs.* Freedman, 2 Pars. Sel. Cas. 274; *s. c.*, Allen's Tel. Cas. 1; The State *vs.* Litchfield, 58 Me. 267; *s. c.*, Allen's Tel. Cas. 494; National Bank *vs.* National Bank, 7 W. Va. 544.

‡ *Ibid.*

§ 2 Pars. Sel. Cas. 276; *s. c.*, Allen's Tel. Cas. 3.

"each other, nor is the counsel permitted to reveal the secrets "of his client, because otherwise the most important social rela- "tions could not effectively exist. The claim that society has "on the testimony of all its members, in courts appointed to "administer public justice, is made to give way in such cases "to the maintenance of other great relations, in which the "public are even more interested."

How can it be said that if A., wishing to communicate with B., chooses to transmit his thoughts by electric telegraph instead of by oral or written message, he thereby creates or enters into *a relation with B.*, which it is the paramount interest of society itself to protect, by making privileged and inviolable every communication *transmitted in that manner*, without reference to its contents, even at the expense of the regular administration of justice? Such a rule, if prescribed at all, must be uniform; every communication sent by telegraph must be privileged, as is every communication between attorney and client, or husband and wife. But why should a given message, which, if orally communicated or delivered through the mail, would be subject to compulsory disclosure, become a privileged communication if sent by telegraph? This would be discriminating, not in the interest of the parties concerned, or of society at large, but of the business of the telegraph companies. Public policy, in respect of what communications shall be privileged, has nothing to do with the mode of their transmission, nor with the motive of its selection, nor with the desire of either or both parties for secrecy, but solely with the consequences to society at large of permitting or prohibiting their disclosure in aid of justice. In order, therefore, to support the claim that telegraphic messages, as such, should be held privileged communications, it must be shown that unless they are, the electric telegraph cannot be generally made available as a medium of communication, and also that this consequence would be more injurious to society than the denial to the courts of this means of attaining the truth. But the former proposition is untrue, as experience demonstrates; and as to the latter, the unques-

tionable danger of abuse is to be met by applying, not by perverting, sound legal principles.

On the other hand, the immensely increased facilities for crime, and the grave obstructions to public justice which would result from placing telegraphic messages, as such, on the list of privileged communications, are forcibly stated by the court in the cases already cited, The State *vs.* Litchfield, and Henisler *vs.* Freedman. And the answer made to this by Judge Cooley,* —namely, that the United States postal laws do now protect the correspondence of criminals transmitted through the mail, incidentally, indeed, but because in the interest of society at large all private correspondence should be inviolable—is met (as we have seen) by a two-fold reply: that the public policy which protects all private correspondence *while passing through the mail* does not rest upon the particular mode of transmission, —*i. e.*, by written as distinguished from oral message,—nor upon any relation between the sender and receiver, but upon a trust voluntarily assumed, and public confidence invited by the government itself; and, also, that from the moment this trust is fulfilled, all such correspondence, not otherwise privileged, does at once become subject to the process of the courts, under proper lawful conditions.

It seems clear, therefore, that the arguments which would not merely confine within its true limits the doctrine of Lord Ellenborough in Amey *vs.* Long,† but deny its application under any circumstances to telegraphic messages, have been rightly disregarded by the courts.

But the House Judiciary Committee in the Barnes case,‡ and the St. Louis Court of Appeals in *ex parte* Brown,§ have carried that doctrine to the opposite extreme.

It was maintained in these cases, in effect, that it is compe-

* Am. Law Reg. 72 (February, 1879).

† 9 East, 473.

‡ Cong. Rec. vol. V., pt. 1, p. 604.

§ 8 Cent. L. J. 378.

tent for a court, or for a legislative committee, not only to compel the production by a third party, under a subpœna *duces tecum*, of private papers in his possession, the competency and relevancy of whose contents are at least *prima facie* established, but also to compel the manager of a telegraph company to search for and produce the originals or copies of all telegrams which, during six months preceding, may have passed between persons not before the court, without reference to their contents or subject-matter, and without even *prima facie* proof of their competency or their relevancy to any issue pending, in order that the court, or a grand jury, or a legislative committee, may inspect them all, and find out which, if any, are competent for any purpose, and relevant to the matter under examination. The former proposition is the true doctrine of Amey *vs.* Long; the latter, we repeat, is something wholly different and untenable.

In answer to the argument of counsel, that such an enforcement of the writ would be an "unreasonable search and seizure" of private papers within the prohibition of the Constitution, the court said, in *ex parte* Brown, that the eleventh section of the Missouri Bill of Rights (identical with the fourth amendment to the Federal Constitution)—

* * * "has little bearing upon the present question, except by way of argument and illustration. * * * Apart "from the general nature of the warrants, which was the great "evil and the decisive ground of illegality,—a truth which is "perpetuated in the language of the constitutional provision,—"the point was the indiscriminate seizure of all papers which the "accused preserved in the privacy of his home, and the illegality of compelling, by force, the communication of the contents "of those papers, thereby constraining the person, so far as the "papers availed against him, to become his own accuser."

The court also say:—

"It is further urged that there is no sufficient or certain description of the papers required. * * * But the obligation of secrecy imposed by law on the grand jury is a sufficient "answer to the objection that the subject-matter of the dispatches is not indicated."

The limits of this paper forbid more than a brief statement of some reasons why the power asserted in the two cases referred to does not belong to the courts, and is within the prohibition of the Constitution.

1. No such power is asserted or implied by the ruling in Amey *vs.* Long. That case assumes that the evidence called for is at least *prima facie* competent and relevant. But the very object of this compulsory search is to find out whether the suspected papers contain such evidence, and this in disregard of the rights of third parties, and of the "principles of reason and equity" appealed to by Lord Ellenborough. A subpœna *duces tecum* issued under such circumstances, and for such a purpose, —fishing for evidence on suspicion, without proof,—is the very counterpart of a search-warrant obtained to hunt for goods not even alleged to have been stolen, and without any of the prerequisites which the Constitution exacts even from criminal justice.

2. The plea that such a power will always be exercised in the sound discretion of the court does not meet the objection, even were it not always dangerous to enlarge that discretion in matters of personal right. But the function of a court to determine whether evidence proposed to be offered is admissible, is something completely different from this alleged right of a court to order the private papers of a third person to be searched or produced, in order that the court, by inspecting them, may determine whether they contain admissible evidence. The one is a judicial duty; the other an inquisitorial and irresponsible power, always liable to inflict grave and unjustifiable injury on third parties. No such right can belong to a court without at least *prima facie* proof that the papers called for, being also particularly described, are competent and relevant; for it is precisely on that assumption that the right to compel their production, in aid of the administration of justice, depends. It is begging the question, therefore, to reply that the court will exercise a sound discretion in the inspection and disposition of

private papers thus forcibly brought before it on suspicion of their relevancy, when it does not yet appear that the court has any right to examine those papers at all.* Doubtless it is a very grave and difficult practical question—probably the turning-point of the whole controversy—just when that right of the court does exist. Like many other practical questions in the administration of justice, it cannot be answered beforehand for each case, any more than an exact statement can be made of the circumstances necessary to constitute fraud, or to impart constructive notice, or of the length of "a reasonable time." What *can* be done is to distinguish clearly the "principles of reason and equity," and of constitutional right, by which, *in every instance*, as Lord Ellenborough said,† courts must be guided in the exercise of such a power; to recognize the dangers which environ it, and to provide such safeguards—as definite as may be—as will reduce these to the *minimum* of possible injustice and wrong.

3. The doctrine of *ex parte* Brown is inconsistent with the established principles of evidence, whether at law or in equity.

a. At common law, the fundamental theory on which the pleadings were made up was the elimination from the case of all matters not essential to the precise dispute between the parties. As to the evidence, nothing is admissible which is not relevant to the issues thus framed.‡ Nothing else *is* evidence

* Lord Denman, in Doe *vs.* James, 2 Mood. & R., 47, refused to order an attorney to produce a will left with him by a client; and to the argument that it might, on inspection by the court, prove to be a will of personalty, which ought to have been proved, and, being thus made public, would not be within the professional privilege, said: "It is suggested that it is a will of personalty, "and that I may refer to it to ascertain whether the fact be so; but I do not "think that a judge has any more privilege to examine the document than "any one else. I cannot call on the witness to produce it." This ruling was cited approvingly by Maule, J., in Volant *vs.* Soyer, 13 C. B., 235.

† Amey *vs.* Long, 9 East, 473.

‡ 1 Greenl. on Ev., sec. 51; Malcolmson *vs.* Clayton, 13 Moore P. C. 198; Stephen's Dig. of Ev. (1876) p. 4; Whart. on Ev., secs. 25, 29.

in the cause, and the compulsory power of the court can rightfully extend to nothing else. It cannot, therefore, be rightfully invoked *in invitum* by either party, unless *bona fide* invoked for that purpose; and that such is the fact should be first made to appear, as well as to establish the right as to guard against its abuse.

b. In equity, the power of discovery has always been strictly limited to matters apparently material to the plaintiff's case. The first two of Vice-Chancellor Wigram's five propositions* of the Law of Discovery insist on this condition. Mr. Hare† cites Lord Redesdale‡ to the like effect,—which, indeed, is familiar law. The same doctrine is held, more strongly, if possible, in respect to private papers; and such chancellors as Redesdale,§ Loughborough,‖ Eldon,¶ and Thurlow,** have recognized the mischiefs attending their unnecessary production and inspection. Said Lord Loughborough, in Shaftesbury *vs.* Arrowsmith:††

"Permitting a general, sweeping survey into all the deeds of "a family, must be attended with very great danger and mis-"chief. * * * It may set up a title, not for the benefit of "plaintiff, but to the injury of the devisees, *indulging a specula-"tion to the prejudice of parties whose interest this court has no "right to invade.*"

Lord Thurlow, having at first held‡‡ that negative pleas were not good in equity, changed his opinion, and admitted them;§§ which, Lord Redesdale states,‖‖ was on the express ground

* Wigr. on Disc. 15, 16. The learned author, in opening his treatise, says (p. 2): "The exercise of a jurisdiction of this nature cannot be otherwise than "pregnant with danger to the interests of those against whom it may be en-"forced, unless careful provision be made for guarding against its abuse."

† Hare on Disc. (2d ed., 1876) p. 136, chap. 2.

‡ Mitford's Eq. Pl. 306.

§ *Id.* 241.

‖ 4 Ves. 66, 71.

¶ Cock *vs.* St. Bartholomew Hospital, 8 Ves. 141.

** Hall *vs.* Noyes, 3 Bro. C. C. 483, 489.

†† 4 Ves. 66, 71; *s. c.*, Langd. Cas. in Eq. Pl. 380.

‡‡ Gun *vs.* Prior, 1 Cox, 197.

§§ Hall *vs.* Noyes, 3 Bro. C. C. 483, 489.

‖‖ Mitford's Eq. Pl. 241.

that by compelling an answer and discovery to every bill, however false its suggestions, "the title to every estate, the transactions of every commercial house, and even the private transactions of every private family, might be exposed; and this might be done in the name of a pauper, at the instigation of others, and for the worst of purposes." But, may not even greater mischiefs attend the enforced and indiscriminate production of private telegrams accumulated on the files of a company? A defendant in equity might at least refuse to answer interrogatories not apparently material to the plaintiff's case, but this unrestricted power of search drags every relevant and irrelevant message into court.

4. The possibilities of abuse become still greater when the indiscriminate information thus obtained is submitted, not to a court, but to a committee of investigation, or to a grand jury. It is not wise to put too severe a strain upon the virtue even of statesmen, nor absolutely certain that every such committee will scrupulously guard the secrets, perhaps of personal or political rivals, not relevant to the inquiry in hand, which the sifting of six months' accumulated telegrams might reveal. As to the grand jury, the obligation of secrecy imposed on them by law by no means sufficiently answers the objection to an indiscriminate seizure of telegrams for their inspection. That obligation relates to matters supposed to come legitimately to their knowledge. It does not authorize nor justify them in compelling confidences which their duties do not require. Such a plea concedes the right of every man to be protected from any unauthorized exposure of his private affairs. And since the wrong done him by such an exposure does not depend on the number or office of those to whom it is made, but on the fact that it was unauthorized,—as the right of action for a libellous letter is complete if it be published but to one person,—the wrong is complete, and the mischief may be irremediable, though it be made to the grand jury alone. Moreover, while it is true that in Missouri grand jurors cannot

testify as to what took place before them, except to impeach a witness or to support a prosecution for perjury,* the law is different elsewhere. In Mississippi,† grand jurors are bound by no oath of secrecy. In Massachusetts,‡ Indiana,§ Pennsylvania,‖ and North Carolina,¶ and perhaps in other states, it is held on general principles of public policy that, notwithstanding his oath of secrecy, a grand juror may be required, both in criminal and civil cases, to testify to matters which came before him as such; and Mr. Bishop, reviewing these cases, maintains the true principle to be, that after the person indicted is under arrest, the grand juror's obligation of secrecy should yield to the duty of disclosure in the interest of justice.** Thus by no circuitous route, the compulsory disclosure to a grand jury of irrelevant private telegrams might lead to that very "evil and illegality" of general warrants deprecated by the court in *ex parte* Brown,†† the constraining a person, by the enforced production of his private papers, to become his own accuser.

5. This "evil and illegality" of general warrants, said the court in that case, was the evil chiefly aimed at by the constitutional guaranty against "unreasonable searches and seizures" of private papers, namely, "the indiscriminate seizure of private "papers preserved by a man in the privacy of his home, thereby "forcibly compelling the communication of their contents," and furnishing proof against himself. And it was further said that telegrams are not within this constitutional provision, because they are not kept private at home, but have been voluntarily communicated to the telegraph operator. Waiving the question whether a communication can be called voluntary without

* Beam *vs.* Link, 27 Mo. 261.
† Bishop's Cr. Proc., sec. 858, note 1.
‡ The Commonwealth *vs.* Mead, 13 Gray, 170.
§ Shattuck *vs.* The State, 11 Ind. 477.
‖ Huidekoper *vs.* Cotton, 3 Watts, 56.
¶ The State *vs.* Broughton, 7 Ired. 96.
** 1 Bishop's Cr. Proc., sec. 859.
†† 8 Cent. L. J. 378.

making which the telegraph is wholly unavailable, this argument is unsound. Every paper belonging to himself which any man desires to keep private, and communicates to no one except confidentially, for his own private purposes, remains a private paper so far as either third parties or the law is concerned, *until some lawful reason and necessity arises for that paper to be made public.* The personal right of privacy in respect of one's papers is as truly invaded, and an enforced search into their contents is equally "unreasonable," within the meaning of the Constitution, whether such papers be indiscriminately seized in the owner's house, or without some lawful reason therefor are indiscriminately seized from the confidential keeping of a telegraph company, by means of a subpœna *duces tecum*, and delivered to a court, or grand jury, or legislative committee, for inspection at will.

6. But such a construction of that constitutional guaranty as thus suggested by the court, is altogether narrow and misleading. The second clause of the fourth amendment (which is the type of the provision in the State constitutions) does in terms prohibit the issue of general warrants except upon probable cause, on oath or affirmation, particularly describing the place, person, or thing, etc. But that clause, aimed at a specific abuse and custom of oppression which Wilkes's case had made prominent, neither defines nor limits the broad declaration of personal right contained in the clause preceding. The latter purports, not to confer, but to recognize and guarantee the fundamental "right of the people to be secure in their persons, "houses, papers, and effects, from unreasonable searches and "seizures." It asserts, not only the sacredness of home from unlawful invasion, but the larger personal right of protection against arbitrary power in person and property, wherever situate, of which the sacredness of home is only one form. Doubtless that right must yield, whether as to the person or the property of the individual, whenever the safety or the welfare of the community demand the sacrifice; but for this some

reason must exist which the law deems sufficient; or else the demand, the search, the seizure is "unreasonable" and unlawful, though neither its object nor its effect be to procure evidence of crime, or to make a man his own accuser. Inquiring further, we find that even search-warrants issued in conformity with this provision are permitted only in aid of criminal justice, and not of civil demands; and accordingly, in Robinson *vs.* Richardson,* the Supreme Court of Massachusetts said:

"All searches, therefore, which are instituted and pursued "upon the complaint or suggestion of one party, into the house "or possessions of another, in order to secure a personal advan- "tage, and not with any design to afford aid in the administra- "tion of justice in reference to acts or offenses in violation of "penal laws, must be held to be unreasonable, and consequently, "under our Constitution, unwarrantable, illegal, and void."

7. But the compulsory production of a mass of telegrams, contents unknown, in order to find out what evidence, if any, they contain, is a peculiarly "unreasonable" and dangerous abuse of power. The simple fact of their indiscriminate accumulation exaggerates the dangers which courts of equity so carefully guard against in granting discovery. Those dangers and mischiefs are pointed out with great force in Judge Cooley's article, above mentioned. He says:

"Telegraphic communication, if not inviolable, offers a per- "petual temptation to malice. A legislative committee may "employ the power of calling for it to blacken the reputation "of an opponent; a business rival may be annoyed, and per- "haps seriously compromised, by means of it; a family feud "may be avenged or quickened by bringing out confidential "messages, and so on. All that is requisite is a suit, and a "magistrate not over-nice respecting the admissibility of "evidence, and the messages are always at hand, ready to be "called for. To get letters it might be necessary to resort to "stratagem, and perhaps to violence. It is idle to say that "these are merely fanciful and wholly improbable cases; they "may occur at any time when the interest or the malice of

* 13 Gray, 456. See also 1 Bishop's Cr. Proc., sec. 240; Cooley's Const. Lim. 307, note 1.

"others is sufficiently powerful to instigate proceedings which "in law are baseless. Even the judge may not be able to pro- "tect the party whose communications mischief or malice would "drag before the public; for, as Mr. Justice Maule observed, "in a case where an attempt was made to require an attorney "to produce the title-deed of a third person, if the judge were "to decide that it was not a proper instrument of evidence, "'his decision might be made the subject of argument in open "'court, by a bill of exceptions; and thus the contents of the "'deed might be communicated to all the world.' Volant *vs.* "Soyer, 13 C. B. 231, 235."

It is quite true that inconveniences may result from the lawfully enforced production of private papers, including telegrams. But the reason is so much the stronger why the law should not be violated to make the evil greater still.

8. A further objection to the indiscriminate compulsory production of telegrams has been already quoted from Judge Cooley's article,—in effect, that to the extent that it may discourage correspondence, it is against the policy of the law, as being a restraint upon industry and enterprise, and also upon intimate family and social intercourse. Such a result is at variance, not only with the policy of the law, but with that "primordial right of free communion" maintained with so great ability and learning by Dr. Francis Lieber in his "Political Ethics,"* and again in his "Civil Liberty and Self-government,"† as being not only "one of the most precious and necessary rights of the individual," but also "one of the primary elements of civil liberty." This right he shows to include free letters, as well as free speech and a free press,—*free*, in the sense of being exempt from arbitrary, malicious, or mischievous intermeddling, no less than from the graver wrong of downright suppression. In this respect a real similarity exists between correspondence by letter and by telegraph. The wrong and the evil of "unreasonable searches and seizures" in either case are alike, though the circumstances of illegality may be

* Page 183 (2d ed.)

† Chap. 9, p. 108.

different; and the public indignation which would surely and swiftly flame out in the one case ought to be not less prompt and unsparing in the other. But the "right of free communion" does not in either case imply an exemption from those disclosures, however inconvenient to individuals, which the due administration of justice and the execution of process issued under lawful conditions must from time to time require. It is only by enforcing this distinction that the courts can fulfil their own duty, while also guarding those fundamental rights whose strenuous and successful assertion against arbitrary power was "the great glory of the common law,"* and which were thence engrafted upon our American constitutions.†

The considerations above presented appear to justify the following conclusions:

I. Telegraphic messages, however confidential, do not, *as such*, constitute a class of privileged communications. Remaining in the custody of the telegraph company, they are subject to compulsory production for use in evidence, under process lawfully issued, whenever those conditions are fulfilled, in respect of the case in hand, which must exist in any case to render lawful the exercise of such a power.

II. The right of a court to compel by subpœna *duces tecum* the production in evidence by third parties of private writings, described with certainty, and first shown to be at least *prima facie* relevant and competent, does not include any right to order search for, or compulsory production of, papers not thus brought within the lawful power of the court; and the compulsory search for and enforced production by third parties of such papers, in the absence of such certainty and proof, is an "unreasonable" and unlawful search and seizure, within the meaning of the Constitution.

III. The exceptional features of the telegraph service, including the virtual necessity for its use by the public, and the

* Sedgw. on Stat. & Const. Law, 267, note *a*, 271.

† 2 Story on Const., sec. 1902.

unavoidable accumulation of private messages in telegraph offices, give rise to exceptional danger of abusing even the lawful power of the courts, and devolve upon them the duty of exceptional precautions in its exercise. And in view of the apparent tendency of the decisions, this judicial duty should be defined and enforced without delay by appropriate legislation.

IV. The telegraph service of the country, as an indispensable agency of commercial intercourse among the States, has been held by the Supreme Court to be clearly within the grant of congressional powers. Congress should exercise that power in this regard, not necessarily by assuming the service of the telegraph, a completely distinct question not involved in the present discussion, but by such uniform regulations as will protect those who use it, not only against unauthorized disclosures by telegraph employees, but also from interference by state legislation, or by any court, with the lawful right of free communion, and from "unreasonable searches or seizures" of such communications under color of civil or criminal process.

V. Such regulations should prescribe, as precedent to the exercise by any court of the power in question, conditions which shall effectually distinguish the lawful right to compel the production of relevant and competent evidence from the inquisitorial and oppressive power of searching among, or compelling the production of, private papers of third parties, to find out what evidence they may contain. Among these should be included:

a. An affidavit of the party applying for such writ, at least upon information and belief, of the existence, the sufficiently certain description, and the alleged or supposed contents of the dispatches called for, showing their relevancy in the cause.

b. Reasonable notice of such application, so far as practicable, to any third person, sender or receiver of such telegram, and reasonable opportunity to show cause against the same.

c. In addition to the criminal penalty for false swearing in any such affidavit, a right of action for exemplary damages against any person wilfully or maliciously procuring, by means of such process, the unnecessary disclosure of any private message.

VI. Effectual provision should also be made against the like abuse of power by any legislative body or committee thereof. The constitutional right of such bodies to take and compel testimony touching facts, the knowledge of which is requisite to the fulfilment of their constitutional duties, is not denied, and was convincingly affirmed by the Supreme Court of Massachusetts in Burnham *vs.* Morrissey; * but it was also there held that such bodies are not the final judges of their own powers and privileges in cases involving the rights and liberty of the citizen, their action in that regard being subject to the review of the courts. The legislative recognition of the principles already discussed would doubtless go far, in future, to prevent the necessity for judicial interference in such cases.

It only remains to be said that, if the suggestions thus presented are sound in principle, it is full time for their consideration both by courts and legislators, and for the restraint within just and constitutional limits of a judicial power whose abuse—whether wilful or negligent, and no matter how instigated or procured—is as dangerous to personal right as its due exercise is necessary to the administration of public justice.

* 14 Gray, 239.

PAPER

READ BY

GEORGE A. MERCER.

The Relationship of Law and National Spirit.

The very intimate and philosophical connection subsisting between the laws and the spirit or temper of a community, though sufficiently obvious to reflection, often escapes or eludes casual observation.

It requires some study and thought properly to appreciate and exhibit the vital importance to every political fabric of a healthy national temper, as the support, guardian, and interpreter of its legal institutions. The spirit of a community, in the largest sense, represents its prevailing opinion and feeling; it signifies the views of the people in relation to their various interests; the motives by which they are governed, and the prejudices by which they are controlled. It is compounded of various elements—interest, habit, pride, prejudice, all enter into its composition. It is moulded by the pursuits and circumstances of the people, by climate, situation, government, and laws.

The spirit of a community is generally quite correctly delineated by the legal institutions of the country; they yield in time to its creative or plastic influence, and express, with fidelity, the moral aspect of the people they constrain. Nothing, for example, could more forcibly indicate the corruption of the Athenian spirit than the law which made it a capital crime to propose the application to purposes of state of the money designed for the theatre. Unjust and oppressive laws, no nation,

animated by sentiments of liberty, will bear; mild and beneficent institutions, no corrupt and servile people will retain.

The spirit of liberty, which began to prevail in England after the immediate depression of the conquest had passed away, resented the imposition of the arbitrary feudal regulations, and by the constant friction of public opinion adjusted them to the free temper of the nation. The harsh and oppressive consequences of subjugation were gradually displaced, and just and proper laws substituted in their stead. But these very laws, during the arbitrary reign of the Tudors, when the national spirit had been palsied by the sufferings of civil war, were abrogated or disregarded. Every barrier that had been erected for the protection of the people was leveled. The accommodating temper of the governed kept pace with the spirit of royal usurpation. The Parliament, in their terror, enacted that the proclamations of the king should have the force of laws, and "an amazing heap of wild and new-fangled treasons" were prepared to entrap the indiscretion of the citizen. But the free and manly temper, which has preservod British liberty through so many political convulsions, was not extinct. It again animated the soul of the nation. The feeble ripples which at first chafed, rather than commanded, the will of the ruler, again swelled with the power and majesty of the ocean. Public sentiment, enfranchised and strengthened, resisted the encroachments of power; and, during the reign of the Stuarts, arbitrary and oppressive laws were repealed or accommodated to the altered spirit of the nation.

The same intimate connection between the legal institutions and the public temper of a people may be traced in the history of the ancient states, and the vitiation of the latter can be readily recognized by the changes that were made in the former. Some monuments of Grecian and Roman freedom survived for a time the spirit that produced and upheld them, but finally they were perverted from their true design or crumbled into ruin when their support had been withdrawn. It is true that the

form and letter of the law will sometimes be retained after the vitalizing spirit has disappeared.

The Roman people continued to address as consul the ruler who wielded the power of a king, and the English invested with all the show of absolute authority the royal person whose predecessor they had hurled from the throne. The enslavement of a nation, which retains the legal monuments of freedom, is therefore not impossible, but it is rare and only temporary. Sooner or later the spirit of a people must exhibit itself in their laws. The ancient writers attributed great efficacy to public manners, using the term in a broad sense, to denote the mental and moral characteristics and habitudes of men collected together into societies.

But the manners of a people are only its spirit in action. They are the more direct and immediate effect of that public temper which exhibits itself in the laws. Political writers have dwelt much upon the fatal effects of a corruption of manners, and luxury and vice have been assigned as the fruitful causes of national ruin. But corrupt manners are a result rather than a cause. National decadence is due not so much to the influence of luxury and vice as to the corrupt spirit which they indicate and out of which they grow. Vicious practices may sometimes be obstructed or corrected, but though the symptoms be suppressed, the fatal malady remains where the vital spirit is diseased.

The connection between the laws and the spirit and manners of a people being therefore of the most intimate nature, so that the vigor and purity of the former cannot co-exist with the corruption of the latter, the following propositions necessarily result—

First. It is impossible to introduce and maintain good legal institutions among a people whose spirit is debased and unprepared to receive them. Take, for example, as the strongest illustration which presents itself, a purely despotic government. Montesquieu has shown that the spirit of a despotic government

is fear. In this state, therefore, the fountain of public virtue and happiness is poisoned in its source. A free spirit is the ruin of such a government; a servile temper is its strength. It can endure only by the systematic corruption of all political virtue. Established upon the permanent debasement of the people, those generous and aspiring qualities, which are to free nations the source of unbounded strength, only threaten this with destruction. The disposition to protect one's rights is a constant assault upon the state; the very notion of right must be extirpated from the mind. The laws that are suffered to exist are known only by their oppression, and are confounded with the arbitrary will of the ruler, while the will of the ruler again adds terror to the law. The established supremacy and fixed operation of law, which are the best guaranty of security and happiness to the citizens of a free country, afford no consolation to the inhabitants of a despotic state. There nothing is fixed but compliance, nothing is immutable but oppression. The very idea of law, which Burke defines to be beneficence acting by rule, is associated with a blind and fatal power that impoverishes the body and extinguishes the mind. No longer the harmony of the state, it is become a jangling and horrid discord; as if the grand operations of nature which in more favored climes move on in concord, charming with melodious sounds and tranquil motions, here performed their functions with desolating energies and awful clamor.

As the principles of a despotic state are founded in the inertia of the people, all of its force is directed to the stupefaction of the soul. Those great and noble emotions, which stretch beyond the petty interests of self, are carefully repressed. The free and frank expression of opinion, the aspiration after virtue, the paternal temper, and the benevolent heart, are incompatible with the spirit of a despotic state. Sympathy itself, the crutch of misery, is a bond of union, and therefore inimical to its theory. No principle of association can be tolerated. Languid isolation is the settled condition of existence, and the unfortunate subject

finds in his insignificance his only security; conscious only of apathy and languor, all the budding energies of his nature are carefully pruned and diverted from the light. In the emphatic language of Montesquieu, the lot of man in this unhappy state is only instinct, compliance and punishment.

It is therefore impossible to introduce and maintain good legal institutions in a nation whose organic spirit is fear, and in which all those qualities of mind and heart, which render them acceptable and profitable, are extinguished through the very principle upon which the government is established.

No people debased by arbitrary power are fitted for the reception or enjoyment of just and beneficent laws until a radical change has first been effected in the national temper. Some agency, sufficiently powerful to revolutionize the spirit which vitiates the nation, must therefore be applied before any permanent change in the character of its legal institutions can be accomplished.

The decrees of Tiberius against adultery were impotent to check a crime sanctioned by a vitiated public sentiment. The English laws against robbery would hardly reform the predatory habits of Bedouin Arabs, nor could the finest penal code, by its own inherent vigor, have ended the piratical practices of ancient Greece or of modern Barbary. Digests and decrees are powerless without the sustaining force of a virtuous national sentiment; and history as well as philosophy teaches that the reformation of the public temper must precede the introduction and enforcement of proper laws.

Solon declared that he had given to the Athenians the best laws they were able to bear. The spirit of the East Indians proved to be unfitted for the mild Code prepared for them through the instrumentality of Macaulay. The wise and liberal statesman Sir Stamford Raffles declared the people of Java were fitted for the reception of free institutions, but that he was an advocate for despotism in Sumatra. The republics of South America adopted the free institutions of the North American

States; but the spirit which breathed stability and happiness into the latter was totally wanting in the former, and Carlyle declares that when the reign of freedom began, that of order and felicity ceased. De Tocquevile pronounces them the most unhappy governments upon earth. Mexico adopted a constitution similar to that of the United States, but the free spirit that gave life to the latter was wanting, and Mexico has continued the prey of anarchy or of military despotism. It is unnecessary to produce further illustrations of the truth that good institutions cannot be established among a people whose spirit is too corrupt to maintain them

Second. The best legal institutions will decline and perish if subjected to the influence of a vitiated national spirit. The wisest laws, though grounded originally in the affections of the people, cannot resist the encroachments of an agency subtle but unceasing, which operating like the deep tides of the ocean beyond the reach of ordinary vision, slowly but surely undermines the proudest structure. Governments and laws are not put together by mere measure and rule. They cannot be successfully constructed upon arbitrary principles, but grow up among the people who use them from simple and natural causes. They resemble the products of nature rather than the refinements of art. They mature like a plant, and derive their qualities from the soil which produces, and the elements which sustain them.

It may be safely affirmed that none of the plans of government, projected by fanciful writers, would have suited any people upon earth without ample modifications. Mr. Locke's famous constitution for the Carolinas proved intolerable to the people who tested it, and demonstrated the futility of those Utopian schemes which are not founded upon the particular interests, passions and prejudices of mankind. It is the spirit of the nation therefore that vitalizes its legal institutions, and preserves them in vigor and usefulness, or silently undermines and destroys them.

Whatever the prevailing sentiment of the people may be, it will exert its force in spite of the barriers that oppose it. Political and municipal regulations are powerless to resist the tide of its progress. If the spirit of commerce predominate, it will often exceed the limits of justice, and the provisions of law. The spirit of conquest will overrun the faith of treaties, and evade the terms of national obligation. Rome, when inflamed with the desire of extending her empire, was not restrained by the language of compacts. Viriathus was assassinated while protected by the peace which he had granted. The people of Numantia were exterminated while they vainly imagined themselves safe under the sanction of a solemn treaty. Manlius made war upon the Galatians under the idle pretext that their ancestors, some centuries before, had plundered the temple of Delphi. The Romans united with the Acarnanians in waging war against the people of Ætolia upon the ground that the Acarnanians had befriended their ancestors a thousand years before by failing to unite with the other Grecian states in sending troops to the siege of Troy. It is therefore vain to imagine that political or legal institutions will retain vigor or expression, if opposed by the predominating sentiment of the people. They will yield with an insensible but irresistible progress to the corruption of the national temper; this alone can breathe into them vitality, or invest them with power.

The gold of Lysander which tainted the frugal spirit, and thus altered the severe policy, of Sparta, proved more fatal then all the fleets and armies of Athens, and prepared the way for the rapid decline of that vigorous and warlike state. The Tarentine colony of the Italian coast, a child from the loins of this sturdy Sparta, exhibited in the feeble spirit and manners of her people the greatest contrast possible to those singular institutions inherited from the parent state, but which her debased spirit rendered unendurable.

The public sentiment, engendered by the political convulsions of the British empire, has constantly overthrown the plainest

provisions of law. Although the statute of Edward III had expressly declared that nothing should be regarded as treason which did not come within its enacting letter, Lord Hale states that during the violence of the reign of Richard II this statute was arbitrarily construed and enforced as one or the other faction prevailed. "The crime of high treason," says Hale in his pleas of the crown, "was adjudged to the disadvantage of the party that was to be judged." The law of Richard III, forbidding taxation without the authority of Parliament, was violated during the reign of Henry VII. A survey of English history will furnish many examples.

The trial by jury has been suffered gradually to decay and perish in the monarchial countries of Europe, because it was not fortified by that national spirit which can alone preserve it in purity; in England, on the contrary, it has been cherished in the heart of the people, and perpetuated in all its original vigor as a vital and indispensable right. A thoughtful study of the constitutional history of the Grecian and Roman states exhibits to the fullest extent the influence of the public temper upon the laws of a country. Institutions which enabled them, while a simple and virtuous spirit prevailed, to attain the largest degree of prosperity, were neglected, perverted, or rescinded, when that spirit grew feeble and corrupt.

Third. The prevalence of a proper national spirit will temper the worst institutions, and may ultimately subvert them. The spirit which animates a people, though almost as invisible, is as pervading as the atmosphere, and eliminates by a silent, but irresistible process, the noxious qualities of the laws. Almost imperceptibly it can render soft and flexible the rigid will of the ruler, and infuse confidence and strength into the timid heart of the subject. Its subtle alchemy can distill from arbitrary power itself the mildest and most benevolent practices. In those countries where the will of the ruler is subjected to the least degree of control, by educating and directing that will it can often effectually blunt the keen edge of oppression.

It operates in the gracious exercise of the pardoning power, and in the remission of those severe penalties which distinguish despotic rule. In many of the old English statutes it was enacted that the offender should be punished at the king's pleasure. Under the impetus of a vitiated public sentiment, this authority would have proved a general charter of oppression; but controlled by the free and mild spirit which has usually pervaded the British nation, it was restrained by construction to mean the pleasure of the king as exercised in his courts of justice by the sound discretion of his judges, acting under oath.

By the theory of the British constitution, Parliament is omnipotent, and an act of that body would undoubtedly be effectual to the dissolution of a corporation; but this power, restrained by a liberal public sentiment, rests mainly in theory; and except in the instances of the suppression of the order of Templars in the time of Edward II, and of the religious houses in the time of Henry VIII, no instance is recalled of the arbitrary exercise of this power.

If the state be pervaded by a corrupt or cruel spirit, the force, which a milder public temper would restrain, will descend with merciless energy upon the subject. Henry VII and his ministers were imbued with a spirit of avarice; the common law judges during that reign, consequently, rendered themselves odious by their rigorous enforcement of obsolete penal laws for the purpose of increasing the revenue. Shakspeare, in the character of Angelo, has portrayed the effects of a severe spirit in the ruler, who, in the exercise of his discretion, can awake "all the enrolled penalties" which have for ages, "like unscoured armor hung by the wall."

The operation of the laws is always most uncertain in arbitrary states; for, possessing no inherent and durable vigor, their action is dependent upon the will of the ruler and his subordinates; but a mild and liberal spirit will not permit the enforcement of cruel laws; the benevolent temper which per-

vades the nation descends from the chief to his humblest agent, and mitigates, through the merciful exercise of a wide discretion, a system in itself harsh and inflexible. While the penalties of oppressive laws are thus remitted or softened through the influence of a benevolent spirit, in some cases the law is suspended altogether, being incompatible with the mild sentiments which have penetrated the nation; the subject enjoys from the failure to execute the same security as if the law had ceased to exist. History furnishes many examples of the most cruel laws, which the influence of a merciful public spirit had reduced to a dreadful but dormant threat.

A humane public temper, in addition to its power of obstructing the enforcement of oppressive laws, and in some instances of suspending them altogether, can infuse benevolence into the method and manner of their execution. The fearful spirit of the French revolution exhibited some of its most appalling effects in the obduracy of judges, the cruelty of jailers, and the barbarity of executioners. The brutality of Jeffreys to the unfortunate state prisoners who came before him was more cruel than the laws which he perverted. De Lolme asserts that in some portions of continental Europe, under the administration of the criminal law, accusation and trial are almost as fatal to the accused as guilt. Even in free governments, where the laws are sustained by their own vigor and derived from the consent of the governed, the mild spirit which presides over their administration confers a new security and satisfaction upon the citizen. De Lolme pronounces the humane temper which directs the execution of the penal laws a valuable portion of British liberty. How much more important that this spirit should prevail in an arbitrary government, where laws are enacted for purposes of oppression, and are wielded by a power beyond the reach of control. It is here that the rigid statue of Justice should be veiled in forbearance and mercy.

The benevolent spirit of modern philanthropy has exerted some of its noblest efforts in seeking to soften the asperities

which accompany the enforcement of even the wisest laws. Not satisfied with inculcating that mild spirit which presides with the Judge upon the bench, which tempers the official conduct of the subordinate officers of courts, and which divests those dread tribunals of all unnecessary terrors, it has "dived into the depths of dungeons, and surveyed the mansions of sorrow and pain." It has sought to inspire with a sense of delicacy and forbearance the stern ministers of justice, and to mitigate the severity of its power and ceremonials; it has endeavored to instil benevolence into the hearts of jailers and executioners; it has accompanied the unhappy victim of the broken law to the silence and darkness of his cell, and has sought to inspire with sympathy and pity the mortal instruments which vindicate the last and awful sanction of its power. The influence of a mild, national spirit in mitigating the oppression of severe legal institutions is forcibly illustrated by the early history of the Roman government. A distinguished writer assures us that the ancient Romans, although absolute sovereigns in their families, with the *jus vitæ et necis*, the right of life and death over their children and their slaves, were yet excellent husbands, kind and affectionate parents, humane and indulgent masters. Nor was it until luxury had corrupted the virtuous simplicity of the ancient manners that this paternal authority, degenerating into tyrannical abuses, required to be abridged in its power and restrained in its exercise. The oppressive consequences of the feudal institutions which permeated every part of France, and created so vast a disparity in legal privileges between the nobility and the great mass of the nation, resulted in that political revulsion which buried in one common grave the relics of arbitrary power, the amenities of life, and the consolations of religion. The oppression of the laws was greatly enhanced by the proud and exclusive spirit of the nobles, and the indifference and contempt with which the third estate was regarded. But in the Province of La Vendée a mild and liberal temper prevailed. The humane spirit which pervaded the inhabitants of that section broke the force of those oppressive laws

which in other portions of France descended with cruel energy upon the people. A practical and softening equality was introduced. The intercourse of the several orders of society was spontaneous and kind. The peasant approached without trembling the loftier station of the peer, the noble graciously descended to the level of the swain. Landlord and tenant mingled freely in their rustic employments or sylvan sports, and a generous consideration and kindly regard were thus diffused among all classes. Over this liberal and attractive social life religion extended her benign and equalizing sway. While, therefore, the rest of France was maddened by cruel laws, not softened by a generous public temper, into the overthrow of all law and order, the peasants at La Vendée steadfastly adhered to the ancient institutions, and maintained an affectionate fidelity to their nobles, and a generous loyalty to their king.

A liberal and enlightened national spirit is capable of exerting a very perceptible influence upon the interpretation and construction of laws. Penetrating the breasts of the authorized expositors of those laws, it controls them by a concealed but irresistible force. Even under those legal systems which are the effusion of free institutions, and which, therefore, exhibit a fixed and definite purpose, some room for construction is always provided by the imperfection of human intellect, and the uncertainty of human language. How much greater scope is afforded for the operation of a humane and liberal temper under political systems which imbue their laws with a vague and indeterminate meaning. That accurate scholar, Sir William Jones, has expressed the opinion that the Athenians were probably satisfied with speaking very generally in their laws, and that they left their juries, for juries they certainly had, to decide favorably or severely, according to the circumstances of each particular case. The temper of the community, which the jury necessarily shared, became, therefore, of the utmost importance. There are many courts of justice upon the continent of Europe, whose decisions are regulated by general principles of natural

equity in conjunction with the maxims of the Roman code. In all tribunals of this character, where there is an enlarged judicial discretion, the spirit of the community, which penetrates the courts, is of the utmost consequence to the liberties and the happiness of the subject. But there is always room for construction, even under the most exact systems.

During the period of the civil wars in England, Lord Erskine declared, just as fast as arbitrary constructions were abolished by one statute, unprincipled judges began to build them up again, until they were beat down by another; and he asks if the State trials in bad times are to be searched for precedents, what murders might not be committed, what law of humanity would not be trampled upon, what rule of justice would not be violated, what maxim of wise policy would not be abrogated and confounded.

A Chief Justice of England declared, at a period when the spirit of liberty was depressed, that the laws of England were the King's laws; that it was his prerogative to dispense with them on all urgent occasions, of which he was the sole judge, and that this right was not to be taken away from him. A different rule and practice of construction distinguishes those periods in which a more free and enlightened public spirit prevailed. It has long been settled that the laws of England must be interpreted in accordance with their reason and spirit; the common law is said to demand nothing impossible, and Justice Powell, in a celebrated case, asserted that what is not reason is not law. It has even been intimated that what is inconvenient is contrary to law. While these and similar statements are expressive rather of florid commendation than of an accurate exposition of the common law, they at least indicate the free and enlightened public spirit which pervades the British nation, and animates her judiciary.

In a state imbued with a humane and liberal public temper the expositors of the law will reject, in all doubtful cases, that interpretation which would ground it in oppression, or invest it

with a spirit of severity or injustice. Sir William Blackstone asserts that if collateral consequences, contrary to common reason, arise from the language of an act of Parliament, it is, with regard to these consequences, void, and the judges are at liberty to expound it by equity. While this suggestion is doubtless in derogation of the omnipotent authority of the British Parliament, it indicates no spirit of judicial legislation on the part of the learned commentator, but a liberal and enlightened temper which could not conceive that Parliament would designedly do what was unreasonable or unjust. The Parliament of Paris grounded its judgments upon the edicts of the king when it had once admitted them to registry; but if those ordinances were regarded as grievous to the subject, the parliament refused to place them upon registry on the supposition that they were not really expressive of the royal will; and they then proceeded to make remonstrances against them; in some instances the king deferred to this liberal construction of his parliament; but, if resolved to enforce a measure thus objected to, he was obliged to appear in person, and direct the proper officer to place it upon registry. Many unjust or oppressive laws were thus obstructed or defeated by a mild and generous spirit operating upon their construction.

The legislation of a country naturally succeeds in point of time the development of the national spirit. A liberal and enlightened public temper always foreruns and heralds the enactment of just and wholesome laws, and prepares the way for them by the principles it inculcates, and the usages it originates. Legal maxims and customs are always biased by the prevailing genius and temper of the nation. In the reign of Henry VIII it appears to have been generally held that a common carrier was chargeable, in case of a loss by robbery, only where he was guilty of carelessness or indiscretion; but in the commercial reign of Elizabeth it was resolved by the judges, upon general principles of policy and convenience, that if a common carrier were robbed of the goods entrusted to him, he

should, under all circumstances, be responsible for their value. Many similar illustrations might be furnished of important alterations in legal principles which were effected by judicial construction, directed by the spirit of the period.

A free and enlightened public spirit can not only exert its beneficent influence through the interpretation of laws, but by the construction which it places upon particular facts and events.

Many instructive examples can be furnished of this mode of its exercise, but none illustrate it more strongly than those which may be drawn from the history of English villeinage. Under the Saxon government there were a class of persons in a condition of actual servitude; they were employed in the most menial offices, and, with their children and effects, belonged to the lord of the soil, like the cattle upon it. But this deplorable condition in which a portion of their countrymen, of the same race and capacity as themselves, were kept, was inimical to the free and generous temper which began to pervade the English people and to influence the decisions of the English judges. They therefore seized upon every opportunity to confine so pernicious a system within its narrowest limits, and gradually to destroy it. The issue of a marriage between a free person and a villein, was held to follow the condition of the father, being contrary to the maxim of the civil law that *partus sequitur ventrem;* and the great influence of this doctrine in favor of liberty, consisted in the conclusion that wherever the father was unknown (a condition of affairs of common occurrence under every system of slavery) the issue should receive the benefit of the doubt, and be adjudged free.

The broadest and most liberal interpretation was also placed upon all the dealings of the master with his slave; if he bound himself in a bond to his villein for a sum of money, if he granted him an annuity by deed, if he gave him an estate in fee, for life or for years, if he brought an action against him, in all these instances he was construed to have dealt with him as a freeman, and therefore to have exercised an act of manumission.

In this manner did the free spirit of the nation interpret the acts of the lord; and so steady and universal was the encroachment upon a system at war with the public temper, that when tenure in villeinage was virtually abolished by the statute of Charles II, there was hardly a pure villein left in the nation.

A humane and liberal national spirit can also mitigate the oppression of severe institutions by seizing with generous avidity upon whatever may be successfully insinuated between the wielder and the victim of power. The moral virtues plead earnestly against the harsh and arbitrary exercise of authority, and the most malicious heart or the most vindictive temper experience some dread of a healthy public opinion, and shrink from the gratification of their propensities at the price of opprobrium and disgrace. It is by appealing to those considerations which influence the generality of mankind, that a benevolent spirit can make itself felt under even the most arbitrary institutions. The wild inhabitants of the Arabian deserts, though living under an arbitrary and anarchical system, are not devoid of humane and liberal sentiments. The generous temper which exists has employed the virtue of hospitality to restrain the practices of a violent government and the turbulence of a lawless people. Hospitality has been invested with the authority of a settled legal custom, with laws of its own, which are as binding as positive regulations. All are familiar with the attractive narrations of its power. It introduces a sort of charm into the wildness of the desert, and sheds a mellow light over the rude life of its inhabitants. The great and powerful bow submissively to its influence; the weak and unfortunate fly to its protection. It supplies the place of locks and bolts in the midst of savage tribes; and the man who has tasted of an Arab's salt, can sleep securely in the tent of his enemy. The tendencies of a system, which tolerates the most lawless practices, are thus restrained and tempered to the softness of regulated institutions. Predatory incursions are countenanced and encouraged, and "robber" is an epithet of honor; but in the

scenes of turbulence and conflict, which necessarily ensue, if the perpetrator of violence himself can touch some third person and claim his protection, the paramount obligations of this law of hospitality palsy the arm uplifted to strike, and retribution melts into mercy before the power of sentiment. Thus, in one of the wildest regions of the earth, does a generous public temper mitigate the ferocity of savage institutions and tribes.

The great influence of the religious sentiment of a people in modifying or thwarting the operation of oppressive laws, is also a most interesting subject of investigation; but more than a brief allusion would exceed the limits of our present inquiry. The appeals made to augurs and oracles in the ancient states, and the extensive application of the wager of battle among the Gothic tribes, are illustrations of that heavenly sanction which, among polished or barbarous peoples, is sought in the operation of laws. Glaucus consulted the Delphian Oracle to ascertain whether he could justly withhold from the owner a deposit entrusted to his care. Every wise legislator endeavors to invest with a divine authority the code which he promulgates, and among instructed and Christian communities, those laws which manifestly violate the will of the Deity as revealed or as discovered by enlightened reason, are considered destitute of binding force. But a false religious sentiment may be perverted to sanction the most pernicious doctrines, and to increase the rigor of those cruel institutions, which, in its pure and genuine application, it can only soften. Sir Matthew Hale complained that the Jesuits in France and elsewhere had made use of the maxims of natural law to encourage theft; and Blackstone relates, with irony, that while the free spirit of the English people was steadily effecting the enfranchisement of all the villeins in the land, the heads of the religious houses, swayed by their scruples about impoverishing the church, continued to retain possession of their own. It is, therefore, manifest that the force of cruel laws can be broken only by the wide diffusion of that pure religious temper which, of itself, introduces a spirit of equality

and mercy, or that the humane and generous temper which pervades the nation must employ the religious sentiment that prevails as the instrument of its benevolent purposes. The tenets of the Mohammedan system are not those of the mild religion of Christ, but they have been humanely used to interpose an insuperable obstacle between the power of the prince and the weakness of the subject. In despotic states, says Montesquieu, religion has more influence than anywhere else; it is fear added to fear. The power of the ruler may be of the most arbitrary character, but he cannot compel his people to violate the established rules of the common faith. These rules may therefore be employed to resist his cruelty and to direct his action. A practical and humanizing equality, which at certain periods brought the lord upon a level with the humblest boor, was introduced into Russian society through the agency of religious festivals; and to this pious assimilation, which periodically leveled ranks and prejudices, may be traced a source of that more liberal and progressive spirit, which has imbued the Russian people. The prevailing religious sentiment of a community must always exert a powerful control over the enactment, interpretation and enforcement of laws. If it be the pure religion of the Christian dispensation, received in its simplicity and vigor, it must finally imbue the nation that has entertained it with a humane and generous spirit, and the asperities of oppressive institutions will melt away in the light of its truth and mercy. But even if it be some monstrous superstition, built by cunning upon those sentiments which are common to mankind, history teaches that a liberal and benevolent public temper can employ it as an effectual instrument to mitigate the ferocity of tyrants and to soften the cruelty of laws.

A beautiful illustration of the power of public sentiment to break the force of the harshest legal institutions was afforded by that system of opinion which grew up in Europe during the darkness of the middle ages. The feudal polity planted by the

northern nations upon the ruins of the Roman empire, however contrary to political justice, was not inimical to liberal and manly sentiments. Amidst the rigors of that military establishment, which the Gothic conquerors extended over Europe, arose a spirit admirably calculated to temper its oppression. Embodying itself in the form of chivalry, which, in the language of Sir James Mackintosh, was more properly its effusion than its source, it acquired a wonderful ascendency over the minds of rude and lawless chieftains. It supplied the place of fixed legal institutions in an unsettled and ferocious age. The obligations of justice and the dictates of humanity were beautifully incorporated into the system, and merged their natural proportions in the power that enveloped them. Justice, isolated, would have proved too feeble to protect the claims of innocence in an age when arbitrary power was universal. Humanity, separated from its chivalrous concomitants, would have turned a deaf ear to the cries of suffering amidst the wide divisions of rank and the rigors of martial rule. But, absorbed into a system of sentiment, which embodied the peculiar opinions of the age, they performed their holy functions beneath the veil of its disguise, and by the assistance of its power. Those turbulent chieftains, who would have leveled the civil barriers erected for the preservation of public tranquility, dared not trample upon the obligations of chivalry; and municipal codes became less obligatory and respected than the fine-spun theories of a system of opinion.

While the existence of a proper public spirit can thus temper the force of oppressive institutions, it will finally subvert them altogether, if sufficiently diffused and persistent. Its steady operation in the English nation removed, one after another, the relics of feudal tyranny. As is always the case among a people whose temper is free and progressive, the legislation of Great Britain has never kept pace with the spirit of its inhabitants. Its moral melioration has always preceded the reformation of its laws. The severe and unequal features of its legal system

have yielded only to the long and persistent attrition of public opinion. But the strong and swelling tide of the national sentiment has never failed in the end to overthrow such reverend legal vices and hoary iniquities as vainly obstructed its progress. Even those features which it cherished, and touched with a reluctant hand, it has steadily transformed; all objectionable parts have been removed; all obnoxious elements eradicated. The trial by jury, which in other countries has been suffered to decay, in England has been constantly improved. The same evidence of the influence of a liberal and enlightened national spirit is exhibited in the reformation of the laws prohibiting illegal imprisonment, and in the improvement of all those great muniments of political and civil liberty which have distinguished and adorned this nation. Accurate observers have never failed to discover in the prevailing public temper the lineaments of those great changes which it indicated, and finally produced. In the absence of a free and progressive national spirit, time will only consolidate and fortify the worst institutions; while, on the contrary, the most unjust and oppressive laws will relax to its influence, and finally succumb to its power.

While a liberal and enlightened national spirit is thus extensive in its application and powerful in its influence, its prevalence is particularly to be desired in a free government, where all authority resides in the people. A virtuous prince may oppose the passions and resist the corruption of his subjects, and by his personal influence impart vigor or humanity to the operation of laws; monarchical governments, with a national spirit vitiated to the last degree, have been meliorated by the influence of an Antonine or a Trajan; but in a democratic state, the corrosion of a vicious public temper is immediate and universal. Government cannot perform its functions without the direct or mediate action of the populace. Laws are not only enacted, but enforced, by the people. All the complicated machinery of the state is constructed, regulated and directed

by them. The spirit of the State is the State; the forms and operations of the laws are only its outward and practical expression. While the public temper continues free and enlightened, government will perform its functions with harmony and efficiency; but disorder and ruin will visit its sensitive parts if they lose that virtuous lubrication which can alone maintain their complex and delicate motions.

That a liberal, enlightened and virtuous national spirit is essential to the existence and efficacy of a good, legal establishment, will be rendered apparent by the following considerations:

That peculiar class of rights and duties, which Paley styles imperfect obligations, are dependent for their proper exercise and employment upon the temper of the community. Government cannot, by positive regulations, constrain the purity of elections, the incorruptibility of magistrates, and the fidelity of citizens to their civil duties. All these results, so necessary to its prosperity, can be secured only by the assistance of a proper national spirit. To the guardianship of this spirit is entrusted almost entirely the exercise of the right of suffrage, and all the momentous issues which flow from its corrupt or virtuous use.

While a proper national spirit can thus alone secure the due performance of many public duties, authorized or enjoined by law, the punishment which should follow their neglect or criminal exercise is dependent upon the same influence. The impeachment of vicious ministers and magistrates, the indictment and prosecution of popular crimes, the presentation of tolerated abuses, the condemnation of the dread tribunal of a virtuous public opinion, are great national ends, which laws, unaided, are powerless to secure. A great writer declares that the English law has left mercantile integrity to be enforced chiefly by public opinion. English history furnishes many instances of the influence of this spirit. Corrupt practices, which have crept into existence in spite of its authority, have finally succumbed to the punishment it provided. It has purged the

legislature and purified the courts; it has driven corruption from high places, and by the weight of the penalty it visits upon offenders has constrained the occupants of public positions to better counsels and purer practices.

In every free government there are certain suspensive or veto powers legally secured to the people, and sometimes necessary to repress the encroachments and usurpations of the executive. It is manifest, however, that a proper exertion of this means of coercion is dependent entirely upon the free and virtuous temper of the community. The Valerian law, which permitted any citizen condemned to death, banishment or corporeal punishment, to appeal to the people, and which initiated the democratic constitution of the Roman government, furnished the populace a simple means of resisting the arbitrary and oppressive exercise of authority. Under the constitution of the United States the executive is powerless to suspend the writ of habeas corpus, without the concurrence of the people, acting through their representatives. The most effective check to the encroachments of an arbitrary king possessed by the English people consists in the power of the Commons to withhold supplies; and this power has frequently been exerted in behalf of popular freedom. But it is manifest that in all the instances cited the firm and wise exercise of the preventive power depends entirely upon the spirit of the people, and that these great constitutional checks would remain dormant and useless, if the public temper were too complaisant or servile to call them into requisition.

In all free governments, at least in those which have adopted the common law, the system of trial by jury may be regarded as a fundamental feature. While it is an established principle that the judge responds to the law, and the jury to the facts, the two are frequently so intimately blended as to be incapable of severance. In all such cases the jury practically decide the law as well as the facts. The law is, therefore, enforced by men drawn from the community at large, who participate in

its feelings, and are influenced by its spirit. A proper public temper is, therefore, essential to the pure administration of justice. The judges are often elevated above the passions and prejudices which agitate the popular heart, and resist the contagion which has poisoned the mass. But the jury, drawn from the great body of the people, is already steeped in its spirit and tainted by its corruption. The evils that afflict a State arise not only from the defects of its laws, but also from their imperfect execution. Now, where the trial by jury prevails, laws forbidding offences which receive the tacit assent of a depraved public sentiment cannot be rigidly enforced. The laws which prohibit duelling, the carrying of concealed weapons, gaming in its various forms, the illicit intercourse of the sexes, and other offences of a similar character, are often notoriously destitute of coercive force; and juries, responsive to the spirit of the community, refuse to lend their necessary aid to their application and enforcement. A very striking illustration of the influence of national opinion upon positive legal enactment is furnished in the life of Lord Erskine, in his defence of Lieutenant Bourne, of the royal navy, brought before the court of King's Bench, for having sent a challenge to Admiral Sir James Wallace, his commanding officer, who was said to have used him very tyrannically. Erskine declared, "I profess to think, with my worthy friend who spoke before me, that the practice of private duelling, and all that behavior which leads to it, is a high offence against the laws of God, and * * that it is highly destructive of good government against men. * * But though I feel all this, as I think a Christian and a humane man ought to feel it, yet I am not ashamed to acknowledge that I would rather be pilloried by the court in every square in London than obey the law of England, which I thus profess so highly to respect, in a case where that custom, which I have reprobated, warned me that the public voice was in the other scale."

Every free government is necessarily productive of political parties. The spirit generated by such parties exercises a pow-

erful influence over the opinions and conduct of individuals. The passions which predominate in these jarring and discordant sects, by which free communities are usually divided, are often contrary to the dictates of justice and the obligations of law. Nothing can correct the natural tendencies of these vehement party passions which engross free society, except the influence of a just and virtuous public spirit. If the community be deeply imbued with a strong sense of justice, with a reverence for the laws, and with that humane and generous temper which it is also the province of freedom to instil, limits may be established which even party spirit will not transcend. But in the absence of that virtuous sentiment which pleads for humanity and for justice, all that is valuable in government and attractive in society may be wrecked in the extravagance of its fury. De Tocqueville draws an animated picture of the tyranny which an unbridled party spirit is capable of inflicting: "When an individual or a party is wronged in the United States, to whom can he apply for redress? If to public opinion, public opinion constitutes the majority; if to the legislature, it represents the majority, and implicitly obeys its instructions; if to the executive power, it is appointed by the majority, and is a passive tool in its hands; the public troops consist of the majority under arms; the jury is the majority invested with the right of hearing judicial cases; and in certain States even the judges are elected by the majority. However iniquitous or absurd the evil of which you complain may be, you must submit to it as well as you can."

The customs of an enslaved people, says Montesquieu, constitute a part of their servitude; those of a free people a part of their freedom. National customs, however, are but the result and expression of the national spirit. A free and virtuous public temper is not only the guardian of good institutions, but the instrument which applies and diffuses their blessings; it is always needed for the purpose of aiding and correcting even the wisest and most beneficent laws. It tempers the authority

of magistrates, and dignifies the association of equals. It is experienced in the justice and humanity of the ruler, in the forbearance and urbanity of the citizen. It adorns and lightens the performance of public duty, and sheds an attractive and elevating influence over all the intercourse of life. It produces that sense of personal value and dignity, that consciousness of power, that conception of political equality, which are the source of so many virtues, and bring home to the inhabitants of free countries a constant realization of the happiness their liberty confers. The insolence of lawful office is frequently as hard to bear as the exertion of illegal force, and the coarse or brutal exercise of conferred authority can inflict as deep a wound upon self-esteem and mental serenity as the practices of arbitrary rule. The freedom and enjoyment of social and political intercourse may be marred by the airs of affected superiority and the assumption of a proud and dominating temper, as well as by the force of oppressive laws, or the agencies of despotic rule. The charm of human association is destroyed when a spirit of inequality and injustice assumes the place of generous and liberal sentiment, and mutual confidence and respect are succeeded by distrust and detraction.

The benefits conferred upon a community by the direct operation of wholesome laws are seldom comprehended or appreciated by the mass of the people. Men become accustomed to the legal system under which they live, and learn to view its workings with apathy, and to experience its advantages with indifference. It is only when some disturbing cause breaks the harmony of its jus ce that they are outraged into reflection, or roused to appreciation. But the manner in which laws are enforced is more obvious to the thoughtful observer, and more extensive in the effect which it produces. The violence or partiality of a judge, the severity of a sheriff, the cruelty of a jailer, excite a wider comment and a deeper emotion than the ordinary failure or success of a suitor. Public sentiment receives a greater shock from the unaccustomed exhibition of a vindictive or

vicious spirit than from the ordinary results of the law, however calamitous in the particular instance. The liberal, manly and virtuous temper, engendered and perfected by free institutions, is easily recognized and appreciated, and is a source of constant enjoyment. The citizen may seldom find it necessary to invoke the protection of the laws, and may fail to realize the accustomed blessings conferred by their ordinary and regular operation. He may not be conscious how much of his happiness is due to the safety of his person and the security of his household and property. He may not pause to felicitate himself upon the fact that his mansion is not penetrated by robbers, nor his life endangered by assassins. He may never experience those miseries of lawlessness which could alone enable him to appreciate fully the blessings of his accustomed security. But the results of a free and virtuous national spirit are constantly felt and enjoyed. Its presence is the better realized because its absence is sometimes experienced. It is felt in the freedom and dignity it confers upon social and political intercourse. It is realized in the glow of the heart and the expansion and serenity of the soul, in the flattery it administers to a proper personal pride, in the production of a manly self respect, in that consciousness of individual significance and political value in the operations of government and the administration of law, which is the source of public virtue, and of a pure and permanent satisfaction.

A virtuous and humane spirit constitutes in one of its results a very important portion of national freedom. It is always productive of a melioration of the criminal legislation of the country. It not only softens the conduct of ministerial officers and tempers the entire administration of the penal code, but it mitigates and abridges the penalties imposed upon delinquents. The severity of punishment is usually due to the hardness of the national heart. A barbarous code is the natural result of a violent and obdurate public temper; and while its most striking effects are exhibited in the rigor of its penalties and

the number of victims who perish by its severity, its most unhappy consequences may be traced in the callous sentiment it produces. In this manner one of these evils begets the other. The want of liberality and mildness in the national temper creates and perpetuates a cruel criminal code, and this in its turn indurates the national heart. Severe penal legislation thus multiplies the very evils it was designed to eradicate. But as a spirit of liberality and mildness extends its influence, the severities of the penal code are gradually displaced. Moderate punishments are found to restrain more effectually than the harshest penalties. The exposure of a public trial becomes as terrible as the pains which follow conviction. Shakspeare makes Borachio say that he would rather seal with his death his villainy, which was already on record, than go over it again to his shame. Shame may thus be made the most potent instrument for the suppression of crime, and, in the language of Montesquieu, whatever the law pronounces a punishment becomes an effectual one.

A people who have been accustomed to the enjoyment of liberty, and are imbued with a free and enlightened spirit, are more sensitive to the advances of power, and more vigilant in the preservation of legal rights and immunities than those actuated by a duller or more complaisant temper. Usurpation begins in trifles. Guilty ambition does not often attain its end by a bold and sudden leap, but by slow and cautious steps graduated with cunning discrimination. These subtle encroachments of power escape the observation of a drowsy or servile spirit, but are readily discovered and thwarted where the national temper is vigilant and free. Both Augustus and Tiberius proceeded with the utmost caution to the consummation of absolute power. The former ostentatiously retained the title of consul, and frequently feigned a desire to abdicate his authority. The degraded spirit of the Roman people was unable to appreciate this subtle consolidation of despotic rule; and the feeble public temper which had succeeded the period of

manly and virtuous sentiments was equally blind and submissive to its accomplishment. But it is the fortunate province of a free national spirit to anticipate the aims of a guilty ambition, and to detect and stifle the first germs of oppression before it has time to collect its energies and concentrate its force. This national temper has preserved the laws and liberties of England through all the political mutations of the empire; and in general, whenever her kings have attempted to step beyond the limits of the law, they have involved themselves in imminent dangers and perplexities.

Every free government contains within itself a principle of improvement. This power of periodical reformation, in accordance with the provisions of law, is one of the chief advantages this constitution enjoys over the political system of a more absolute state. In some governments amendment has been rendered impossible without resorting to revolution; popular advantages are to be obtained only by the temporary destruction of all political boundaries. But where the state is free, the means of alteration may be incorporated into the fundamental law, and progress can be secured by popular action without violence or confusion. It must, however, depend upon the spirit which animates the people, whether this power of amendment shall be exercised upon the proper occasion, and whether the alterations effected shall be reformations, and not merely changes. A fickle public temper is one of the inevitable tendencies of democratic society, and wise and settled principles are often endangered by a reckless spirit of innovation. Where nothing is permanent in political or legal institutions, the sentiment of the community which induces and directs all modifications, becomes of the most vital importance. To this is entrusted the whole constitutional fabric,—not only the careful preservation of its principles, but the wise reformation of its provisions. Should the changes that occur in the state exceed the limit of alteration provided for in the organic law, it is still within the power of a free and educated national temper to accommodate them to the spirit of the

constitution, and to employ them for the popular advantage. The violence of revolution may be controlled to the furtherance of public liberty, and from those great political commotions which naturally tend only to confusion and oppression, may be evoked the elements of regulated liberty and national advancement. The revolutions of a government which has been imbued with a free and virtuous spirit are always distinguished by a forbearance and humanity which never preside over the commotions of an absolute state. The mild and conservative spirit which has penetrated the community still continues to restrain its turbulent tendencies, and to check its licentious development. The spirit of humanity and order which has controlled the revolutions of the British Empire distinguishes them in a marked degree from the political convulsions of the continental states; and they have resulted in securing a larger and more definite amount of popular freedom.

Amid convulsions, says Erskine, arising from the maddest ambition and injustice, while the state was alternately departing from its poise on the one side and the other, the great rights of mankind were still insensibly taking root and flourishing. The constitution has only been established more securely upon its base by those political commotions which if controlled by a different spirit would certainly have deranged or destroyed it.

We have thus indicated some of the intimate relations that exist between the legal institutions of a people, and the national spirit and temper. Laws, on the contrary, exert their reciprocal influence, and to some extent mould, and modulate the national spirit. But this branch of the subject, though interesting and recondite, exceeds the limits of our present inquiry.

ANNUAL ADDRESS

BY

E. J. PHELPS.

MR. PRESIDENT AND GENTLEMEN OF THE ASSOCIATION:—I had hoped to have offered you, this morning, what you may perhaps regard as due to the occasion, a written address. Circumstances not foreseen when I accepted the invitation of your committee, have placed that preparation out of my power, and have reduced me to the necessity either of appearing before you without it, or not appearing at all. I should have accepted the latter alternative, if I had felt myself quite at liberty to disregard such an engagement; and if I had not felt so much solicitude for the success of this our first annual meeting, that I was reluctant to have any of its announcements fail. It seems to me that if these meetings are to succeed, we should regard such invitations somewhat as politicians profess to regard nominations for the Presidency: not supposed to be sought, but not under any circumstances whatever to be declined.

Allow me one word further on this subject. While we shall always listen, I am sure, with greater pleasure and advantage, to the elaborate preparation that produces such admirable papers as we heard yesterday, in the address and the essays that were read to us, I hope that the precedent will not be established among us, that such preparation is indispensable. We all know how difficult in our busy lives it is, at all times to command it. I trust therefore, we shall always feel at liberty, when we are fortunate enough to have anything to say, and to be asked to say it, to address each other in the simple unpremeditated style that prevails in courts of justice. In other words, if gentlemen cannot always redeem their obli-

gations in gold, let us have the silver, even at ninety-two cents on the dollar; it is much better than total repudiation.

I shall ask your attention to some observations, more desultory than I hoped to make them, on the subject of Chief Justice Marshall, and the constitutional law of his time.

If Marshall had been only what I suppose all the world admits he was, a great lawyer and a very great judge, his life, after all, might have had no greater historical significance, in the strict sense of the term, than the lives of many other illustrious Americans, who in their day and generation have served and adorned their country.

A soldier of the revolution—the companion and friend of Washington, as afterwards his complete and elegant biographer—greatly distinguished at the bar and in the public service before he became Chief Justice—and then presiding in that capacity for so long a time, with such extraordinary ability, with such unprecedented success—if the field of his labors had been only the ordinary field of elevated judicial duty, his life would still have been, in my judgment, one of the most cherished memories of our profession, and best worthy to be had in perpetual remembrance. Pinckney summed up his whole character when he declared that Marshall was born to be the Chief Justice of whatever country his lot might happen to be cast in. He stood pre-eminent and unrivalled, as well upon the unanimous testimony of his great contemporaries, as by the whole subsequent judgment of his countrymen. The best judicial fruit our profession has produced.

Another interest, less important, but perhaps to the lawyer who dwells upon the history of his profession more fascinating, attaches to the life of Marshall. He was the central figure—the cynosure—in what may well be called the Augustan age of the American bar; golden in its jurisprudence, golden in those charged with its service, and sharing in its administration. We cannot expect, since change is the law of systems as well as of individuals, and of all human affairs, we can never expect to see

hereafter, a jurisprudence so simple, so salutary, so elevated, so beneficent, as the jurisprudence of those days. Perplexed as the law has become with infinite legislation, confused and distracted with a multitude of incongruous and inconsistent precedents that no man can number, it is a different system now, although still the same in name, from that which Marshall dealt with. And it is no disparagement to the bar of our day—and no man esteems its ability and character higher than I do—to say that we can hardly hope to behold again such a circle of advocates, displayed upon a stage at once distinctive and conspicuous, as gathered round the tribunal over which the great Chief Justice presided. The Livingstons, Emmet, Oakley, Dexter, Webster, Pinkney, Wirt, Sergeant, Binney, Hopkinson, Dallas—no need to name them all; their names are household words among lawyers. Well may it be said of them, "the dew of their birth was of the womb of the morning;" the morning of this country; the morning of Republican government; the morning of American law, of American prosperity, of American peace. It is sad to remember, what we all have to remember, how largely the fame of such men rests in tradition; how much of it is *in pais*, and how little on the record. It is the fate of the advocate. However important his labors, or brilliant his talents, they are expended for the most part upon transitory affairs—the concerns that perish—the controversies that pass away. Like the actor, he has his brief and busy hour upon the stage, but his audience is of the hour, his applause of the moment. When the curtain falls, and he is with us no longer, very little remains of all his exertions. Even the memory of them perishes, when the witnesses are gone.

But it is not, in my judgment, as a great judge merely, or in comparison with other great judges, that Chief Justice Marshall will have his place in ultimate history. The test of historical greatness—the sort of greatness that becomes important in future history—is not great ability merely. It is great ability combined with great opportunity, greatly employed. The question will be, how much a man did to shape the course of human

affairs, or to mould the character of human thought. Did he make history, or did he only accompany and embellish it? Did he shape destiny, or was he carried along by destiny? These are the enquiries that posterity will address to every name that challenges permanent admiration, or seeks a place in final history. Now it is precisely in that point of view, as it appears to me, and I venture to present the suggestion to your better consideration, that adequate justice has not yet been done to Chief Justice Marshall. He has been estimated as the lawyer and the judge, without proper consideration of how much more he accomplished, and how much more is due to him from his country and the world, than can ever be due to any mere lawyer or judge. The assertion may perhaps be regarded as a strong one, but I believe it will bear the test of reflection, and certainly the test of reading in American history, that practically speaking, we are indebted to Chief Justice Marshall for the American constitution. I do not mean the authorship of it, or the adoption of it—although in that he had a considerable share—but for that practical construction, that wise and far seeing administration, which raised it from a doubtful experiment, adopted with great hesitation, and likely to be readily abandoned if its practical working had not been successful, raised it I say, from a doubtful experiment, to a harmonious, a permanent, and a beneficent system of government, sustained by the judgment, and established in the affection of the people. He was not the commentator upon American constitutional law; he was not the expounder of it; he was the author, the creator of it. The future Hallam, who shall sit down with patient study to trace and elucidate the constitutional history of this country—to follow it from its origin, through its experimental period and its growth to its perfection—to pursue it from its cradle, not I trust to its grave, but rather to its immortality, will find it all, for its first half century, in those luminous judgments, in which Marshall, with an unanswerable logic, and a pen of light, laid before the world the conclusions of his court. It is all there, and there it will be found and studied

by future generations. The life of Marshall was itself the constitutional history of the country, from 1801 to 1835.

It is difficult for us, at this time, to comprehend the obstacles that attended the original construction and practical administration of the constitution. Since the way through them has been pointed out by the labors of that court, since experience has justified and established those propositions, they seem very plain and clear. Starting from our point of view, and going backward, we can hardly appreciate the embarrassments that attended them in the outset. But the student of history will discover, the lawyer who attends to the growth as well as the learning of his profession will never forget, the discouragements that surrounded that subject when it was first taken in hand. A constitution adopted with great opposition, the subject of the gravest difference of opinion among the wisest men, on its most material points; quite likely to fail, as its predecessor the Articles of Confederation had failed; the object of a heated party spirit and a bitter political controversy; it not only demanded the highest order of judicial treatment, but such as could be reconciled to the universal judgment of the country. Popular opinion is a matter with which independent tribunals have usually but little concern. But in this case it became as vital as the law itself, because no constitution could stand, that proved repugnant to the general sense.

The field was absolutely untried. Never before had there been such a science in the world as the law of a written constitution of government. There were no precedents. Courts of justice sit usually to determine the existing law, in the light of authoritative precedents, and statutes. Originality is neither expected nor tolerated. A magistrate who should bring much original invention to bear in expounding the law, would be apt to prove one of those questionable blessings that "brighten only when they take their flight." An original field of judicial exertion very rarely offers itself. To no other judge, so far as I know, has it ever been presented, except to Mansfield, in the establishment of the commercial law; unless perhaps the

remark may be extended to the labors of Lord Stowell, in the department of English consistorial law, and to those of Lord Hardwicke in equity. Those are the only instances that the long history of our profession under the common law offers, of what may be called an original field of judicial labor.

Such was the task that addressed itself, when Marshall took his seat upon the bench, to the court over which he presided. A task of momentous importance—fraught with infinite difficulty—in a field without precedent—and under the most peculiar and critical circumstances.

It is a singular fact, that although the Supreme Court had been in existence twelve years before 1801, when Marshall was appointed, and though three Chief Justices with brief terms of office had preceded him, only two decisions of that court had been made, on the subject of constitutional law;—the case of *Hylton against the United States*, which affirmed the validity of a tax upon carriages, laid by the State of Virginia, and the case of *Calder against Bull*, in which it was held, that an act of the Legislature of the State of Connecticut, granting a new trial in a civil action, was not in contravention of any provision of the constitution of the United States. Those were the only questions previously decided, in respect to the American constitution. Between that time and 1835, when Marshall died, fifty-one decisions will be found to have been made and reported by that court, on the subject of the law of the federal constitution. In thirty-four of those cases, the opinion was delivered by the Chief Justice; being twice as many opinions as were delivered on that subject, by all the other members of the court together.

I have spoken of this great work, as the work of the Chief Justice—not unmindful certainly of his eminent associates, and especially of Judge Story, who sat with him during a considerable portion of that time. And I take leave to refer to the testimony of Judge Story, lest some may think I have gone too far in attributing the merit of this system of law so largely to Chief Justice Marshall. Judge Story is perhaps the best witness who can testify on that point, because his means of knowledge were complete.

He was not likely to undervalue or disparage the labors of his associates, nor entirely to overlook his own very valuable efforts in that branch of the law. He says, in an article contributed to the North American Review, "We resume the subject of the constitutional labors of Chief Justice Marshall. We emphatically say of Chief Justice Marshall. For though we would not be unjust to those learned gentlemen who have from time to time been his associates on the bench, we are quite sure they would be ready to admit, what the public universally believe, that his master mind has presided in their deliberations, and given to the results a cogency of reasoning, a depth of remark, a persuasiveness of argument, a clearness and elaboration of illustration, an elevation and comprehensiveness of conclusion, to which none others offer a parallel. Few decisions upon constitutional questions have been made in which he has not delivered the opinion of the Court; and in those few the duty devolved upon others to their own regret, either because he did not sit in the case, or from motives of delicacy abstained from taking an active part."

It is to be remembered further, that in only one of all those decisions did the majority of the court fail to concur with Marshall. In the case of *Ogden vs. Sanders*—where the power of the States to pass bankrupt or insolvent laws was discussed, he was for the first and last time, in the minority. Four of the Judges—against the opinion of Judges Marshall, Story, and Duvall—sustained the power of the States to pass such a law; but all concurred in the judgment in that case, which was that a discharge under such a law could not affect a creditor outside the jurisdiction, who had not thought proper to appear and become a party to the proceeding. I need hardly say to an assemblage of lawyers, that as the half century that has passed away since most of those decisions were rendered, has completely established and confirmed and rendered plainer and plainer the soundness and the wisdom of the law they involve, so experience has likewise shown, that in this solitary instance in which his opinion was rejected, the Chief Justice was right. He cor-

rectly anticipated, with a far-reaching sagacity, what would be the result of a system of insolvency, that discharges a debtor in one State, and fails to discharge him in another; that pays one creditor who is within the State, and fails to pay another who is without it. And he clearly perceived, that if that great power was to be reposed at all in the federal government, as it is, and of necessity must be, it ought to be an exclusive power. There is the only and mistaken instance in which his judgment on a constitutional question did not become the law of the land.

And therefore it is to be said, without injustice to his associates, and without injustice to those great lawyers to whom I have alluded, and whose genius and labors were contributed to build up this system of law, that the value and the credit of it, the authorship and creation of it, are principally due to Marshall. And I believe it will be seen in future history, that as Washington brought this people through the revolution to a period when they were able to have a constitution of their own, so Marshall carried the constitution through that experimental period, which settled the question whether it should stand or fall. If this country has profited, and if through this country the world has profited, by the raising of an instrument doubtless the most important since *Magna Charta*, couched necessarily and wisely to a large degree in generalities, into the beneficent government under which we live, it is more largely due to Chief Justice Marshall than to any other man, or perhaps to all other men, who ever had anything to do with it. That is my proposition. Of course if the revolution had failed, it is not probable we should always have continued to be colonies of Great Britain. Some other leader, in some other rebellion, might have carried us through to a condition of independence. If this constitution had perished, republican government might not have perished. Some other tribunal, under some other constitution, might perhaps have reconstructed it. But taking history as it stands—dealing with the constitution under which we live, and not entering upon the vain conjecture of what might have been the conse-

quences if that constitution had fallen, certainly the success of the experiment of republican government may be said to be mainly due to Marshall.

When those celebrated judgments were rendered, the questions involved were set at rest. Even party and partizan spirit was hushed. They passed by universal consent, and without any further criticism, into the fundamental law of the land, axioms of the law, no more to be disputed. Time has demonstrated their wisdom. They have remained unchanged, unquestioned, unchallenged. All the subsequent labors of that high tribunal on the subject of constitutional law have been founded on, and have at least professed and attempted to follow them. There they remain. They will always remain. They will stand as long as the constitution stands. And if that should perish, they would still remain, to display to the world the principles upon which it rose, and by the disregard of which it fell.

Let me say here in passing, that the service ought to be rendered to the history and literature, to say nothing of the constitutional law of the country, of bringing these opinions together in some compilation that should make them accessible to the general student, as well as to the lawyer. They are scattered, as you know, through some twenty-five volumes of reports, practically inaccessible to readers outside the profession. They are known only through a vague reputation, except to the profession, and not perhaps so completely understood by all the profession as could be desired, if we may judge from some of the recent discussions upon the subject. If they could be brought together, not merely as the repository of the foundation stones of the fundamental law of the land, but likewise as among the highest models of logic and reason, and the purest specimens of judicial style, it would be a contribution to American letters and history, that would be valuable and permanent.

I do not propose, as you may well imagine, to enter into any discussion on questions of constitutional law. But a few words

may be pardoned, in respect to the means and the manner by which the result I have spoken of, was achieved; and not only achieved, but rendered so perfectly satisfactory to the whole body of the American people. It seems to me that it all turned upon one cardinal point, and a point which I shall venture to suggest needs to be more frequently recurred to, and more clearly understood. And that is, that the construction of the constitution of the United States, for all purposes for which it requires construction, belongs everywhere and always to the jurisprudence of the country, and not to its politics, or even to its statesmanship. The lawyer or the student, who shall set himself down to follow the labors of that great tribunal from beginning to end, to learn on what foundation they rested, and what was the guide through the maze that proved as unerring as the mariner's compass in the storm, will find it in that salutary principle, set forth with the utmost clearness and unanswerable force in the early case of *Marbury against Madison*, followed up from time to time by repeated decisions, and adopted by all jurists and all courts ever since, that the constitution of this country has by an inevitable necessity, reposed in the judicial department of the government, the sole determination and construction of the fundamental law of the land. In England, whence our institutions were mainly derived, Parliament is omnipotent. It is the tribunal charged with the administration of the unwritten British constitution. Their action in that sphere is final. Any statute they deem it proper to pass is a valid statute, and controls all rights, public and private. The American constitution is based upon a different theory. That difference, as it seems to me, is the distinguishing and almost the only vital difference from the constitution of Great Britain. The mere machinery of the administration of the government, the manner in which the chief magistrate shall be elected—the term of his office—the appointment of his subordinates—these and other details are subject to change, as time and experience shall point out. They are not essential to our system. It is not upon these that

Republican government reposes. It is, I say—and I repeat in order to emphasize more clearly the proposition I desire to present—it is upon the entrusting to the judicial department of the whole subject of the constitutional law, for all purposes, that our government rests.—While that stands and is maintained in its purity, this constitution will stand. The ship will ride as long as the anchor holds, though storm after storm may sweep across the face of the sea. While that remains, the system will remain. Details may be modified and changed, we cannot foresee to what extent. Changes of that sort have already taken place, but the principle I have stated, is the fundamental idea.

That point once established by the court, the simple, the ancient, the salutary, the perfectly intelligible and just principles of the common law, became sufficient for all the purposes of constitutional construction. When the rule of construction of the great compact was shown to be simply a question of law, the law was found perfectly adequate to dispose of it.

No better illustration can be produced in history, of the profound wisdom of that system of jurisprudence known as the common law, than to observe how completely those rules that are applied to the humblest contract, between the obscurest individuals, were found sufficient for the emergency, when a court of justice was called upon for the first time in the history of the world, not merely to adjudicate upon private rights, but to promulgate from the bench the principles of civil government, and to adjust the rights and powers of conflicting sovereignties. If the eulogian of the common law seeks for the most signal illustration of its comprehensiveness, he will find it there. It was by the application to the constitution of those plain and clear rules, that all the results of its construction were satisfactorily worked out.

When we peruse those judgments, we are reminded, especially and above all, how absolutely free they are from all considerations of political expediency, all motives of party politics,

all State craft, or even statesmanship, unless it may be deemed the highest statesmanship to avoid the attempt at statesmanship in judicial construction, and not to confound two very different systems of administration, belonging to two very different tribunals. How perfectly free from all suspicion of party or political bias or feeling those decisions stand! And that, as it appears to me, is one reason why they were accepted by the universal consent of the American people, and have always remained without question or dispute. No political party ever yet convinced its adversaries by argument. Discussion only intensifies the dispute; harmony with a political opponent is only obtained, by the exercise of the courtesy which suspends all discussion on the points of difference. No living man could have addressed to the American people in that first critical half century of the Republic, a constitutional argument based upon party politics, that would have stood an hour. It would have been universally rejected; denied by its opponents, despised by its friends. Marshall, as it is well known, was a Federalist. His political opinions were doubtless pronounced and decided. It was not because he was without political sentiments, that he excluded them from his court. The Federal party, I may be permitted to observe in passing, will perhaps receive better justice from future history, than it has from the past. It went to final wreck about the time of the last war with Great Britain, encountering the usual fate of a party which sets itself in opposition to any war it may be proposed to engage in. But I believe the ultimate justice will be done it, of remembering that some of the greatest and purest men this country ever contained were the founders and leaders of that much abused party. Their views have been generally misconceived. It was not upon the construction of the constitution we have, that they differed from their opponents, but upon the previous question, whether we should have that constitution or some other. It is idle to busy ourselves with conjectures of what might, would, or could have been the history of this country, if the constitution which Washington, Hamilton,

Jay, and doubtless Marshall preferred, had been adopted, because it was not adopted. But Federalist as he was, and whatever may be said of his party or their views, we can find no more trace in any line of those great judgments, that would indicate the political sentiments or bias of the Chief Justice, than if we were to study his opinions upon charter parties, or policies of insurance.

Let me quote on this subject some very forcible and apposite language, from the resolutions adopted by the Charleston bar (I know not who was the author*) on the occasion of Chief Justice Marshall's death. "Even the spirit of party respected the unsullied purity of the judge, and the fame of the Chief Justice has justified the wisdom of the constitution, and reconciled the jealousy of freedom with the independence of the judiciary."

As every lawyer and every intelligent layman knows, the point of most danger and difficulty in constitutional construction, where the greatest risk of final shipwreck is incurred, is in the attempt to adjust those conflicting—sometimes doubtful—always very delicate—relative rights of the States and the Federal Government. That point, of all others, was treated by the court with the largest sagacity and the greatest wisdom. Critical as were many of the emergencies that arose in those days out of that subject, they were all not only satisfactorily met, but buried and forgotten forever, under the wise and salutary administration of the law which they encountered.

Upon the distinction, so much and so long discussed in some parts of our country, between strict construction and liberal construction in respect to these relative rights, it was the view of the Chief Justice and his associates, that they were unable to perceive what those words meant in that connection, or what just application they had. The court had simply to ascertain the meaning of a written instrument, which upon common principles was to be construed both strictly and liberally;

* Stated by Gen. Lawton, of Georgia, to have been written by Mr. Pettigru.

strictly in ascertaining what powers it contains, liberally in carrying into effect those powers it is found to contain.

Allow me, in taking leave of this point, to read a few words from the language of the Chief Justice himself, out of much that might be usefully quoted did time allow. "In the argument," says he, "we have been admonished of the jealousy with which the States of the Union view a revising power intrusted by the constitution and laws of the United States, to this tribunal. To observations of this character, the answer uniformly given has been, that the course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so will it never, we trust, shrink from the exercise of that which is conferred upon us." Words which are fit to be written in letters of gold, over every tribunal in this country.

One other suggestion in respect to these opinions of Marshall. I have said they were models of reasoning, and of judicial style; and I repeat the remark. If the constitution were out of existence—if the whole subject which they discuss were to become only a thing of the past, of no further human significance, they would still retain their value, as among the most admirable productions in the logic and literature of jurisprudence. There are two kinds of reasoning prevalent at the bar, and prevalent I may say without undue disparagement, sometimes on the bench. There is the reasoning that silences, and the reasoning that convinces; and they are very different things. The casuistry and plausibility, the dexterity and subtlety, the circuitous and round-about processes of indirection which may confound an antagonist who is not strong enough in dialectics to refute them, is altogether a different thing from that simple, direct, straightforward, honest reasoning, that silences as a demonstration in Euclid silences, because it convinces. Such was the reasoning of Marshall, born of the intellectual as well as moral honesty, the tough and vigorous fibre of the man. And this it was, in great measure, that carried home and established in

the understanding and judgment of mankind, the truths it embodied.

It is foreign to my purpose, and beyond the limits I fear I am already transgressing, to follow the labors of the Chief Justice any further. I shall not at all advert to their value, their eminence, their greatness, in so many other branches of jurisprudence besides constitutional law. I shall not try to depict—no poor words of mine could depict—the spectacle which that unassuming but dignified tribunal presented during thirty-five years of time, while with unabated strength he continued to preside there, until the snows of four-score winters had fallen on his head; surrounded by the associates, and the circle of advocates I have before referred to—dealing with the greatest questions, the most important interests, in the light of the highest reason, the finest learning, the most elevated sentiment, and often with an affecting eloquence, which in our busy day has disappeared from courts of justice, to be heard there no more; enshrined in the respect, the affection, the veneration of all his countrymen; no breeze of party conflict but was hushed in his presence, no wave of sectional quarrel but broke and subsided when it reached his feet. His life, strange to say, remains to be written. Lives enough have been thought worth writing, that never were worth living, but the life of the great magistrate is unwritten still. Perhaps it is as well that it should be. Time was needed to set its seal upon the great lessons he taught; experience was requisite to show what was the result of following, and what the result of departing from them. Some day the history of that life—that grand, pure life—will be adequately written. But let no 'prentice hand essay the task! He should possess the grace of Raphael, and the color of Titian, who shall seek to transfer to an enduring canvas, that most exquisite picture in all the receding light of the days of the early republic.

Perhaps the brethren of our profession do not always remember the high prerogative, which under this system of fundamental law, different from any other we know of, the American bar

enjoys. Lawyers in other countries have nothing to do, as lawyers, with constitutional principles of government, or with the basis on which its administration stands. They deal exclusively with the administration of justice, civil and criminal, between man and man, under a government established and fixed, with the operations of which they have professionally no concern. We, on the other hand, are charged with the safe-keeping of the constitution itself. It is from your ranks that judicial vacancies are constantly to be filled up; the lawyers of to-day are the judges of to-morrow. It is by your discussions, in the light of your writings, by the aid of your labors that every successive question that arises touching the fundamental law, is to be adjudicated. Great and distinguished as the English bar is and has been, it never had any such function as this. And that is doubtless one reason, why the great advocates of the period to which I have alluded, were able to achieve such distinction. They were dealing with a class of subjects, which lawyers had never dealt with before. "Your mere *nisi prius* lawyer," said Burke, when harassed with the technical objections of his adversaries on the impeachment of Hastings—"Your mere *nisi prius* lawyer knows no more of the principles that control the affairs of state, than a titmouse knows of the gestation of an elephant." The remark was as true as it was pungent, when applied to the bar to which he referred. But it has no just application to ours. If the fundamental proposition I have stated is sound, if the constitution that affords the basis of government as well as of forensic law, belongs to the judicial department to determine and to administer, then it is placed in the safe-keeping of the American bar. And we enjoy, as I have said, such a prerogative as never before was conferred upon a body of advocates.

But does that high prerogative carry with it no corresponding duty? Are we charged with nothing as the price of such a privilege? Have we no other trust to execute in respect to the American constitution, than that which all citizens are charged with, and are expected to perform? It is idle to adjure men to

maintain the constitution, or to compel them to swear to support it. Every man p roposes to maintain and support the constitution —as his party understands it. The question is what is the constitution? When a great and critical emergency arises, when a crisis fraught with extreme and vital consequences approaches, what is the constitution? Who is to determine it, and above all, upon what principle and basis of construction? That is the question.

It was pointed out to us in the elegant and scholarly essay of Mr. Mercer, to which we listened last night, how the concurrent testimony of all human experience establishes the truth, that the interpretation and the strength of law is but a reflex of the national spirit out of which all law arises. There is, as it seems to me, a practical and immediate application of that proposition to the legal profession of this country, in this very particular. Their influence is great; their influence upon legislation—their influence upon judicial proceedings—their influence upon the public mind—upon political sentiment, especially in respect to questions particularly within their province. It is from them that the true spirit of the jurisprudence of the country on all subjects, and above all this subject, must of necessity emanate. It is they who make it; it is through them that it must take effect. That political parties will always exist, is inevitable; that they always should exist, is probably desirable; that members of our profession, as of all other professions, should represent all shades of political opinion, and belong to all parties, is to be expected; though I hope on some of them, party ties hang very loose. The question is, how far party differences shall go. Where shall they set out, where shall they terminate? Shall they invade the province of the fundamental law? Is that to be administered by politicians, to be construed by caucuses, to stand or fall upon political considerations, and for the purposes of partizan success? Are not there divergent paths enough, which starting from the constitution as a common ground, and running in every direction through all the ramifications of the administration of govern-

ment, through the whole boundless field of policy, and statesmanship, and expediency, are not they enough for all the purposes of politics, and all the warfare of party? Should not the lawyers of this country meet as on a common ground, in respect to all questions arising upon the national constitution, dealing with them as questions of jurisprudence and not of party, setting their feet upon, and their hands against all efforts to transgress the true limits of the constitution, or to make it at all the subject of political discussion? It is too true, that this constitution of ours, in respect of which it might well be said to him who approaches it, "put off thy party shoes from off thy feet, for the place on which thou standest is holy ground," it is too true, that it has become more and more a subject to be hawked about the country, debated in the newspapers, discussed from the stump, elucidated by pot house politicians, and dung-hill editors, scholars in the science of government who have never found leisure for the graces of English grammar, or the embellishments of correct spelling.

When we reflect upon all this country has passed through, is there no light to be gathered from experience? Should not the members of this conservative profession, "as honorable as justice, as ancient as the forms of law," charged with a duty in this regard so special, and so important, should not they stand together upon these as upon all other questions of jurisprudence, considering and discussing them only upon considerations that belong to jurisprudence, and not upon those that are in the domain of politics? Should not they of all men stand together, and unite to put an end, as I believe they might put an end, if their action was unanimous, not to political controversy—that is neither to be expected nor desired—but to that most destructive form of political controversy, coming from whatever party, or from whatever quarter, or for whatever purpose, that seeks to invade the foundations of the constitutional law, and to plant them on the shifting and treacherous sands of partizan expediency?

And, gentlemen, allow me one further suggestion. What good is to come from this Association, we are trying to build

up? What is to be its significance, or its ultimate value? What is to repay us, or any of us, for turning aside from the current of our busy lives, to meet together here? Questions of detail in the machinery of the law, will be usefully dealt with, no doubt. The pleasure of meeting and forming acquaintances between men of the profession from all the various States, will doubtless be great. But what final good, what permanent usefulness is reasonably to be expected from it, unless it be the creation in our profession, by common consent, by mutual intercourse and support, of a broad, national, elevated, independent, fearless spirit of constitutional jurisprudence? The spirit that builds up and perpetuates, rather than that which pulls down and destroys.

We come together from all parts of our country—our common country—from the scenes of a desolation and sorrow on all hands, that God alone can estimate—over graves numberless to our arithmetic—the harvest of the effort to settle constitutional questions by force of arms. Let it all pass. We come to bury the armed Cæsar, not to praise him. To renew again, in faith and hope, the work which Marshall and his associates began, of cementing and building up on firm and lasting foundations, the American constitution. Is it the court alone that is charged with that duty? Have we no part or lot in the matter? Lingers among us no memory of those who are gone? Comes down to us no echo from our father's time, that shall awake an answering voice?

Fortunately for us all, we have in the successors of the old court, an upright and excellent tribunal. Judges who have addressed themselves, and will continue to address themselves, with great ability, patriotism, and success, to the difficult and embarrassing questions, born of the troubled time. But no court can stand without the cordial support of the bar. It was the strength of Marshall's court, that those great men who rallied about it in the profession, and aided in its discussions, stood by it and sustained it before the country, when

important decisions were made, with a moral force that was adequate to all occasions.

It is idle to say that our sky is free from clouds. It is useless to deny that wise and thoughtful men entertain grave doubts about the future. The period of experiment has not yet passed, or rather, has been again renewed. The stability of our system of government is not yet assured. The demagogue and the caucus still threaten the Nation's life. But we shall not despair. Still remains to us "our faith, triumphant o'er our fears." Let us only for our part, see to it that we discharge the duty that every man owes to his profession. And come what may,

> "Thro' plots and counter plots—
> Thro' gain and loss—thro' glory and disgrace—
> Along the plains where passionate discord rears
> Eternal Babel,"

let us join hands in a fraternal and unbroken clasp, to maintain the grand and noble traditions of our inheritance, and to stand fast by the ark of our covenant.

REPORT

OF THE

COMMITTEE ON JURISPRUDENCE

AND

LAW REFORM.

WILLIAM ALLEN BUTLER, of New York, *Chairman.*

To the President of the American Bar Association:—
The Committee on Jurisprudence and Law Reform present the following report:

Functions of the Committee.

The Constitution of the American Bar Association provides by Article III, for the annual appointment by the President, of Standing Committees, among which is a Committee on Jurisprudence and Law Reform. The special duties of this committee are not defined by the Constitution. Particular subjects pertaining to special branches of the law, to the administration of justice, the enforcement of legal rights and remedies, and the methods of legal education, are confided to other committees.

In view of this distribution of subjects, and of the general purposes of the Association, this committee have considered that their proper duty will be best discharged by attention to such matters embraced in the objects of the Association as may be specially referred to them from time to time. They have accordingly confined their action, during the past year, to

THE SPECIAL SUBJECT COMMITTED TO THEM at the first annual meeting of the Association, at which they were instructed by resolution to enquire into, and report upon "the present condition of the law, as well statutory as established by judicial decisions in the several States, touching the authentication of instruments conveying or affecting real estate, with special reference to the differences in forms of acknowledgment and certification thereof, and with such suggestions as they may deem expedient, looking to greater uniformity therein," and also to make "like enquiry, and report touching the requisites under the law of the several States, in respect to the execution of wills."

In the discharge of the duty thus devolved upon them, the Committee addressed a circular letter under date of January 1, 1879, to leading members of the Association in the several States, soliciting specific information in respect to the subjects embraced in the resolution.

To this circular, replies more or less in detail were received from members of the Association residing and practising in twenty-six out of the thirty-eight States, and a large body of valuable information in reference both to the statute law and the adjudications of the courts relating to the subject of inquiry has been collected, for which the committee tender their grateful acknowledgments to their professional brethren throughout the Union who have thus kindly aided them in their work.

Many items relating to the same general subject are contained in the useful compilation entitled "Hubbell's Legal Directory," the edition of which for 1878–9 has been found by the committee to be very serviceable in supplying information which the committee was unable to procure from direct professional sources.

The execution and acknowledgment of deeds, and the making and attesting of last wills and testaments, are familiar and ever recurring instances of the acts of private persons, regulated as to the manner of their performance by local public law. The interests of society require that these particular acts should be

done in a certain prescribed way. But in all essential respects the acts themselves, wherever performed, are alike. The acknowledgment of a grant or conveyance of land, the execution and attestation of a will are, descriptively, the same acts in Maine and Mississippi, in New York and Oregon. The purpose in every instance of the acknowledgment or the attestation is necessarily identical, to preserve and perpetuate the evidence existing at the time of the transaction, that it was the free, voluntary, and intelligent act of the party whose act it purported to be, and in reality was. There would seem to be no substantial reason why there should not be a like correspondence between the modes of authenticating or attesting the performance of these acts in the several States as exists in reference to the acts themselves. The reason for the acknowledgment or authentication being the same, the rule as to its form might well be the same. We are one people, homogeneous and akin in all our political and social methods, striving together, as all our legislation shows, to simplify the administration of the law, and to conform its methods of procedure and practice to the ideas and wants of our active and progressive age. Throughout the Union there is great similarity if not identity in the tenure of real estate, and the acts by which it is alienated or charged, and there are, in general, no disabilities affecting the disposition of either real or personal property by will peculiar to any State which preclude a mode of execution or attestation which should be common to all.

But, as every lawyer knows, the forms actually prescribed by the statutes of the different States are widely dissimilar. In view of the identity of the object to be accomplished, it would seem as if the ingenuity of law-makers had been taxed to contrive different ways of doing the same thing. Mr. Nettleton, a member of the bar of the city of New York, well known as a commissioner appointed by the executive authority of the several States to take acknowledgment and proof of deeds and other instruments, states to the committee that the forms which he is required to use differ for every State in the Union, except

as to four of the New England States, for which two different forms suffice. An examination of the various forms as reported to the committee, or exhibited in the statutes, will confirm this statement. It would needlessly consume time and space to specify the precise points of dissimilarity in these various forms of acknowledgment. Those which have been longest in use are the simplest. In New England, with the exception of Rhode Island, it is only required that the grantor should acknowledge before a local magistrate his free execution of the deed or other instrument. The justice of the peace or other officer taking the acknowledgment is not required to certify that he knows the person making the acknowledgment, nor is any separate examination of a wife, uniting with her husband in the conveyance prescribed, nor is any special form of acknowledgment or certification necessary in such a case. In some of the extreme southern and western States, on the contrary, the supposed insecurity of life which is sometimes attributed as a reproach to their legal systems, would seem to be measurably compensated by the great caution exacted in respect to the acknowledgment of written instruments affecting the title to land. This will be apparent by contrasting the form of acknowledgment in New Hampshire with that in Texas.

Form in New Hampshire—husband and wife.

"STATE OF NEW HAMPSHIRE, *County of* } *ss*:

Personally appeared the above-named, A. B., and C. D., his wife, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me, this day of , 187 .

[Signature and title."]

Form in Texas—husband and wife.

"STATE OF TEXAS, *County of* } *ss*:

Before the undersigned (here insert name and title of officer), in and for the County and State aforesaid, duly commis-

sioned and qualified, personally appeared A. B., and C. D., his wife, to me well known to be the individuals described in, and who executed the above and foregoing conveyance from A. B. and C. D. and in favor of E. F., and they acknowledged to me that they executed the same for the uses, purposes, and considerations therein stated, and that the same is their act and deed; and the said C. D., wife of the said A. B., having been examined by me privily and apart from her said husband, and having the said deed fully explained to her, she, the said C. D., acknowledged the same to be her act and deed, and she declared that she had willingly signed and delivered the same, and that she wished not to retract it.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, on this day of , 187 .

[Signature and title.]

[Seal."]

Between these two extremes there are many varieties of expression in the prescribed forms of other States. This is especially the case as to acknowledgments by married women. In South Carolina, for example, the wife uniting in a conveyance with her husband, on a separate examination, instead of the customary declaration that she has executed it without any fear or compulsion of her husband, is required to declare that her act and the renunciation of her estate in the lands conveyed is without any compulsion, dread, or fear of any person or persons whomsoever, a comprehensive disclaimer which sufficiently includes the husband without indicating him as an object of particular suspicion.

In Pennsylvania, where the provisions on all the subjects of our present enquiry are special and indicate unusual care and discrimination, the officer taking the acknowledgment must on a private examination read or otherwise make known to the wife the full contents of each deed or conveyance. In Louisiana, under the tutelary system of the civil law, the officer before whom the act of a joint conveyance by husband and wife is

passed, is required not only to make a separate examination, but also to inform the wife fully of the nature of her rights and interests in the lands of her husband, and the effect of her renunciation, and it must appear on the face of the act that this has been done. In the States of the far West the legislation in respect to the property and rights of married women conforms to the ideas now obtaining general acceptance in this country on this subject, and no particular form of acknowledgment is required in the case of a deed or release of dower executed by a married woman, and she may convey her own lands by deed. A recent statute of New York adopts the same rule, and dispenses with separate or special acknowledgments by married women.

In general the main characteristics of the forms of acknowledgment are the same in most of the States, and the variations relate to the degree of particularity deemed necessary. In each State the precise form in use had its origin in local use or the preference of the lawmakers for words of their own selection, as compared with any pre-existing formula, and the result has been a great diversity of expression in declaring the same facts.

A similar diversity of requirement exists in reference to the forms in use in the several States respecting the proof by subscribing witnesses of the execution of instruments affecting real estate, some of the statutes requiring the subscribing witness (as in New York) to be known to the officer taking the proof; to state his own place of residence; that he knew the person described in, and who executed the instrument; that he saw him execute it; that he acknowledged to the witness the execution thereof, and that the witness thereupon subscribed his name; others dispensing with any requisite except proof by the subscribing witness before the officer of the fact that he saw the execution of the instrument, and became a witness at the time of its execution.

The requisites in the several States in respect to the authentication of conveyances and other instruments affecting real

estate within their boundaries—but executed in other States—also materially differ. In general, acknowledgments and proofs of deeds executed without the limits of any State, may be taken by judges and clerks of any Federal court, judges of courts of record, notaries public, or commissioners appointed by the Governor of the State in which the acknowledgment or proof is to be used. In some States the same power is given to any Mayor or chief officer of any city or town having a seal, and to any officer of the State where the acknowledgment or proof is made, authorized by its laws, to take such acknowledgment or proof, his authority being certified by the clerk of some court of record, or of the county, city, or district in which his official act is performed.

The statutory provisions of some of the States, in respect to the form of authentication of instruments in other States, are very specific and particular. All these provisions are directed to the same end, and seek, by regulations deemed proper and necessary by the legislatures of the respective States, to guard against fraud, imposition, undue haste, or other improper practices, in respect to the authentication of instruments by which the title to land is to be alienated or affected.

The various State statutes, regulating the execution of wills, differ, perhaps, even more than those which apply to deeds and their authentication.

Some of the States permit, while others prohibit, the making of olographic wills; some of them allow nuncupative wills to be made under specific conditions of emergency, while others confine the power to soldiers in actual military service, and mariners when at sea. Some of them require the will to be signed by the testator in person; others, in accordance with the existing statute in England on the same subject, permit a signature by another person at the direction of the testator. The formalities to be observed in executing wills vary as to the acts to be done by the testator and by the witnesses, as well as to the number of witnesses required.

The declaration or publication by the testator of the instrument as his will, required by the English statute in addition to its signing and the written attestation of the witnesses, is also made an indispensable prerequisite of validity to a will in New York and New Jersey, but in most of the States this formality is not essential; while in South Carolina no particular formalities are required, the directions in the English statute being usually followed in practice.

It is a common idea, aided, no doubt, by the practice of many members of the profession, that a will must be sealed as well as signed. But the rule of the common law in this respect, which dispensed with a seal, has been generally followed in the statutes of the several States. The revisers of the statutes of New York, in their note to the statute relating to the execution of wills, state that in the sections reported by them, they had endeavored to condense the provisions of the common law as understood and stated by Justice Blackstone. They retained the distinction between wills of real and personal property, and the requirement that a will must not only be signed by the testator, but also declared by the testator, in the presence of witnesses, to be his will, a regulation which, in many of the States, has been dispensed with, the act of signing and attestation being sufficient to give validity to the instrument as a will.

The principles established by the authorities applicable to the general subject of the authentication of deeds and the execution of wills, are well settled, and there is no serious conflict in the adjudged cases.

Statutory requirements as to the mode and form prescribed, must be strictly followed, but a substantial compliance with them is sufficient, and in aid of the certificate of acknowledgment and proof, reference may be had to the instrument itself, or to any part of it. "It is the policy of the law," says Mr. Justice Field, in the opinion of the Supreme Court of the United States, in Carpenter *vs.* Dexter, 8 Wall., 513, "to uphold certificates where substance is found, and not to suffer convey-

ances, or the proof of them to be defeated by technical or unsubstantial objections." The same liberal rule has been applied in aid of wills where the proof has shown a real, though not an exact conformity with the directions of the statute applicable to its execution.

But the diversity of forms alike as respects deeds and wills, has given rise, and must continue to give rise, to a multitude of vexed and perplexing questions, in both the Federal and State courts. In general, every State recognizes acts done in pursuance of the laws of every other State as valid, so far as those laws can give them validity, but the question of their effect in other States depends upon the statutes of those States as construed by their own local courts, or in cases of controversy between citizens of different States, as construed by the Federal courts. There is thus in respect to this whole subject of such practical concern to all our citizens, affecting at vital points the acquisitions, enjoyment, and transmission of the title to lands throughout our entire territory, a real conflict of laws. As respects each other, the several States of the Union are, so far as relates to the making and the enforcement of the laws governing the acknowledgment and certification of deeds, and the execution of wills, foreign nations. Their respective statutes have no extra-territorial force.

A deed properly acknowledged and certified in Vermont, may be ineffectual to convey the title to lands in Illinois. A will valid in Pennsylvania to pass the title to lands in that State, may be wholly void as to lands in Louisiana.

The Constitution of the United States, it is true, provides (Art. 4, sec. 1), "that full force and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State," and Congress, in pursuance of the power conferred by the same article, has, by the Act of May 26, 1790, prescribed the mode of authentication of the statutes, records, and judicial proceedings of the States, and declares that "they shall have such faith and credit given to them in every Court within the

United States, as they have by law or usage in the Courts of the States from whence the said records are or shall be taken." But this statute, as well as the constitutional provision which authorizes it, relates, as interpreted by the Supreme Court, simply to the acceptance as evidence of the statutes, records, and proceedings to which they relate, and not to their legal effect (Thomson *vs.* Whitman, 18 Wall., 457). The independence and sovereignty of the several States as respects local and municipal law and regulation, except so far as they have been expressly transferred to the United States for the purposes specified in the Federal Constitution, are absolute and complete.

No more striking proof or illustration can be found of the vital force of the law as a science, or of its adaptability to human affairs, than by observing its practical operation in the thirty-eight States which now form the American Union. The lawyer, trained in the statutes and under the judicial administration of the particular State of his nativity or adoption, as he passes beyond its boundaries, and visits, in turn, the sister commonwealths, finds a new and never failing source of interest as he encounters in each a separate system of law and jurisprudence, self-centred, complete in all its parts, upholding and executing within its own limits of jurisdiction all the attributes of an independent sovereignty, while in relation to the Federal Union its particular code is administered as a constituent part of one harmonious, comprehensive, and all-embracing plan of government.

But, admirable as it is, this system of diversity and independence in the separately sovereign States of the common Union tends to the indefinite multiplication of perplexing questions in reference to the mode and effect of transactions or acts under the local law of one State, to take effect in another State. In his address before the State Bar Association of New York, at its last annual meeting, Mr. Justice Miller called attention to the fact that under the existing Acts of Congress conforming the practice of the Federal courts to the codes of the several

States, those courts are required to administer the varying and different systems in force in all the States. This, on a larger scale, is the same anomaly as that which we are specially considering—the great and needless diversity of means devised for the accomplishment of the same end. The embarrassment of the Federal judges amid the vexing questions which thirty-eight different codes produce, is kindred to that which every lawyer has experienced, to a greater or less degree, in the annoyance and inconvenience of which the different methods of acknowledgments and certificates in the several States are the fruitful source. The necessity of particular and minute instructions, as to every step in the execution and authentication of instruments outside of his own State, the uncertainty as to the latest provisions of the local law, the fatal facility to mistake which is characteristic of the best-intentioned justices of the peace, the perplexing questions so often arising in the examination of titles, from defects or mistakes in certificates, apparently trifling in themselves, but sometimes the turning points of titles to large estates, these and other illustrations will occur at once to the professional mind and memory as matters of common experience.

It is manifest that the ever increasing intimacy of business and local relations throughout the country, and the increase of population, tend steadily to augment the evils arising from the diversity of statutory regulation on the subject of acknowledgments of deeds and the execution of wills. The questions which must constantly arise upon these statutes occupy the time and thought of lawyers and judges to the exclusion or interruption of what is of greater value and importance. They aid in swelling the already overburdened calenders of our courts, and the overgrown mass of reported judicial decisions. The American bar may well be alarmed at the rapid growth of the State and Federal reports. Well endowed public libraries alone can afford the funds or the shelf room they require. The Federal reports, limited to the Supreme Court of the United States, and the Circuits and Districts which until lately have

afforded scanty materials for the reporter, now number over 200 volumes. The reports of the State courts of New England and New York alone have reached nearly 750 volumes, while the remaining thirty-two States, with not unequal pace, all contribute their annual quota to the formidable list.

West Virginia, admitted to the Union in 1862, has already 11 volumes of reports of its Supreme Court of Appeals. In Minnesota, admitted in 1857, up to July, 1877, 23 volumes of Supreme Court reports have appeared. In Nevada, admitted in 1864, 12 volumes, and in Nebraska, admitted in 1867, 7 volumes have been published.

Many of these recent reports contain valuable contributions to the science of the law by able judges, but so far as they relate, as they largely do, to the construction and application of purely local statutes, including those which prescribe particular forms for the acknowledgment of instruments, and the execution of wills, they are of little value to the general student or practitioner.

It certainly needs no argument to show that if practicable it would be a great gain if substantial uniformity in forms of acknowledgment and the execution of wills in the different States could be attained.

It is difficult to find any good reason why the same form for the acknowledgment, proof, or certification of a deed, or any other instrument affecting real estate, should not be the same all over the Union, or why the requisites in reference to the execution and attestation of wills should not be uniform. The existing English statute—commonly known as Lord St. Leonard's Act—prescribes a rule for Great Britain in respect to wills, which is of universal operation in the United Kingdom, and agrees in substance with the statutory requirements of many of our States. It would be easy to secure, by concurrent legislation, a like uniformity in the United States. But in respect both to deeds and wills, separate legislation is necessary in each State. Uniform rules upon this subject can be

secured only as the result of practical convention or compact between the States. The rules of navigation at sea have, after long effort, gradually, by the concurrence of maritime nations, been formulated in codes which substantially agree, so that the vessels of all nations on the high seas conform to uniform rules adapted to the varying contingencies of navigation. This result has been accomplished by the adoption of rules tested by the experience of different commercial countries, and now made applicable to the wants of all. The rules relating to acknowledgments, and to the execution of wills, depend, like the rules of navigation, upon general principles; but the rules themselves are arbitrary and technical, and in their particular application depend upon the terms of statutes, and not upon any essential necessity or reason.

It cannot be doubted that a genuine and well directed effort towards reform, or at least co-operation, in this matter of common concern, may lead to speedy and important changes in the direction of the desired uniformity. The usefulness of this Association must largely consist in its ability to initiate, or to aid in, measures which shall aim to secure uniformity and simplicity in what is merely demonstrative in the law.

The aggregated intelligence of a profession which is able, in a great public emergency, to improvise a method of determining the succession of the executive department of the national government, and which finds in the ancient writs and processes of the common law of the Mother Country, the ready instruments for controlling the functions of local magistracies, and directing the machinery of municipal law in our newer system of free government, ought to be able to frame a code adapted to general use throughout our country, embodying the essential requisites which should attend the acknowledgment of a deed to a city lot or a section of prairie land, or the execution of a last will.

It may be said that the necessity for uniformity in the statute law of the several States applies with so much greater force to the form of deeds and mortgages than to that of their acknowl-

edgment or authentication. But granting this, the subject of the acknowledgments and proof of deeds, and the execution of wills, forms a distinct branch of statutory regulation, and may properly be dealt with independently of any other branch. The adoption by the different States of simple and identical forms to be used as required by the circumstances of each case, and the conferring upon the same classes of magistrates in all the States the power to take acknowledgments and proofs with a uniform method of certification as to their authority to act, and the adoption of a like uniform mode of executing and attesting wills would tend largely to relieve the profession and the courts throughout the country from grave and needless embarrassments, and to aid in securing that exactness and precision which are to so large an extent the favorite objects of the law.

Confining themselves therefore to this single branch of practical jurisprudence, the committee submit the foregoing suggestions, in which they have sought simply to bring to the notice of the Association facts familiar to the profession, needing no elaborate illustration, and indicating by their mere statements the remedy for the evil to which they relate. If uniformity in the prescribed statutory methods of performing acts which are in substance the same in all the States, and which are being daily transacted in some of them to take effect in others, is really desirable, it can be attained by intelligent, combined, and persevering effort on the part of members of this Association looking to and securing such concurrent legislation by the States as shall give the sanction of each separate sovereignty to a common code recognized and adopted by all.

Besides mere uniformity in practice, it is important that the essential requisites of the acts we are considering should be secured by positive statute. A stricter rule than exists in some of the States should, we think, prevail in reference to the main element which makes the acknowledgment of a deed a safeguard in the transmission of estates, the establishment of the identity of the person executing or acknowledging the instru-

ment with the owner of the estate conveyed. Instances could probably be given by every lawyer in active practice of cases where by false personation and fraud, persons have been deprived of their estates, or seriously embarrassed in the enjoyment of them, and where the mischief might have been prevented but for the lax and insufficient provisions of the statutes in respect to acknowledgments. The requirement of knowledge on the part of the officer taking the acknowledgment of the person making it, and the proper certification of the fact, or of competent proof as to identity, would seem to be indispensable to any proper form for general use. These and other safeguards looking to the prevention of fraud or mistake could easily be matured by concurrent action to that end.

In reference to particular forms which might be the subjects of general acceptance, the committee have not felt authorized, nor are they prepared, to report at present. Such forms should be carefully matured, after conference and co-operation between members of the Association representing all the States. It cannot be expected that the legislatures of those States in which the forms now existing are very simple, would be willing, except for sufficient reason and on due deliberation, to make them more complex, while the more elaborate forms in use in other States are founded upon views which may not easily yield to the demand for uniformity. But much can, doubtless, be readily accomplished by assimilating the forms and methods of the majority of the States in which the existing differences relate to what is non-essential or easy of modification, and in time it may well be hoped that substantially uniformity can be reached. As the result of the views embodied in this report, the committee report for the consideration of the Association, and recommend the adoption of the following

RESOLUTION.

Resolved, That in the judgment of the Association it is greatly to be desired that action be taken by the several States, by proper and concurrent legislation, to secure uniformity in the acknowl-

edgment and authentication of deeds, and other instruments affecting real estate, and in the mode of executing and attesting wills; and to this end the several Local Councils of the Association are hereby directed to co-operate with the Committee on Jurisprudence and Law Reform, as the committee may request and indicate, in the preparation of forms of acknowledgment, proof, and authentication of such instruments, and of regulations as to the execution and attestation of wills, with a view to securing such uniformity, the same to be reported by the committee to the Association at its next annual meeting.

All of which is respectfully submitted,

WM. ALLEN BUTLER, *Chairman.*
SIMEON E. BALDWIN,
HENRY HITCHCOCK.

REPORT

OF THE

COMMITTEE ON LEGAL EDUCATION

AND

ADMISSIONS TO THE BAR.

CARLETON HUNT, of Louisiana, *Chairman.*

TO THE PRESIDENT AND MEMBERS OF THE AMERICAN BAR ASSOCIATION:—The Committee on Legal Education and Admissions to the Bar have the honor to make the following report:

The Committee are profoundly sensible of the importance of the subject referred to their consideration.

Education is the parent of public and of private virtue. By devotion to her, men become profound, expert, learned, and polished. The study of their rights fits them for liberty. Discipline enforces the duty of obedience, and bestows at the same time the qualifications which are indispensable to the ruler. Thus, through the medium of instruction, society is controlled and improved, and mankind is enobled.

Free countries cherish these principles. Liberty and security depend upon them. Where they have been implanted in the hearts of men they triumph over ignorance, error, and wrong; put a term to the agitation and violence incident to popular government, invigorate and perpetuate it.

The American Bar Association was established to accomplish these and similar beneficent ends; to advance the science of jurisprudence, and promote the administration of justice and uniformity of legislation throughout the Union, and to encour-

age cordial intercourse among the members of the American Bar.

Coming together from widely-separated parts of our common country, the members have realized without difficulty that they were known to one another before they met. The rank and standing of members of the profession in the different localities to which they belong is notoriously well settled. In no other profession are principles of subordination more firmly established. The deference shown to experience and length of service at the bar; the distinction which follows reputation for learning and talents; and the precedency accorded to lawyers who have moulded the law by obtaining from the courts leading adjudications, are conspicuous features of professional existence everywhere in America. It comes to pass by the natural course of things, not necessary to be further dwelt upon, that the consideration which the successful practitioner attains where he happens to live, enlarges gradually as he makes progress, until it is felt throughout the State to which he belongs, and, reaching beyond the State, is carried to his professional brethren abroad. In the presence of members of this Association, it is not going too far to add, that there are a number of gentlemen of the bar who realize a still larger distinction, and reach reputation co-extensive with the limits of the country itself.

There is no reason why persons like those referred to, whose lives have been spent in study, and whose exertions have contributed to strengthen the ties of society, and to the amendment and perfection of the law, should not be received by the courts of other States than their own upon the same footing which they hold at home. The practitioner of medicine, who travels abroad, is received everywhere upon no other credentials than his diploma furnishes, into the bosom of the elevated and devoted profession of which he is a member. The services of the civil and mining engineer; those of the botanist, the mineralogist, and the chemist, are eagerly sought for, and the character of such persons recognised and deferred to wherever

known; and it is conceded that the best interests of society are concerned in giving employment, and in doing honor to proficients of this description.

No satisfactory reason, it is submitted, can be given why a different practice should be allowed to prevail regarding members of the bar; why, for example, in the State of New York, a lawyer who has practised many years in another State, cannot appear in the courts until he has served a clerkship of one year in the State; why in the State of Louisiana there is no right at all to practise his profession secured a lawyer from another state, no matter how experienced he may be, unless he begins all over again, and undergoes an apprenticeship, unsuitable and improper, unless in the commencement of professional life.*

The Committee do not doubt that there will be acquiescence in their views on this part of the subject referred to them. Membership in a great and learned profession like the law, ought to carry with it presumption of merit; and experience and distinction are of right entitled to recognition. It must add to the ties which already connect the States; it must promote good neighborhood and sympathy; stimulate the pursuit of knowledge, and establish a just comity everywhere in the country, to regulate the standing as men of science in the Union of gentlemen admitted to practice in their own States.†

It appears to the Committee eminently proper that the subject of qualifications of candidates for admission to the bar should receive the consideration of the Association. It has been said that the American Bar is the only one in the world which does not concern itself about the qualifications of candi-

* Rept. Committee N. Y. Bar Ass'n, p. 10.

† The French law of March 13, 1804 (see chaps. 14, 15, 16), accorded to doctors and licentiates of foreign universities, who had practised their profession during six months in the kingdom before the promulgation of the law, or been duly inscribed on the list of lawyers, equal rights with the graduates of the universities of France. Code Universitaire, p. 60.

dates for admission to its ranks, and their manners and morals after they are admitted. Such a remark, if it were true, involves a great reflection. Perhaps a greater could hardly be made. It is time then to silence it. It is fit to have it spoken no more. What greater interest can the bar have than the education of its members; and what union is more intimate than that which exists between education and character?

The Committee does not stop to consider the truth or falsity of another charge also made in a most responsible quarter,* that the general standard of professional learning and obligation began to decline in the greatest of American cities about the year 1840, and preserved a downward tendency until 1870, when it reached its lowest ebb. It is sufficient to note that this is ascribed to the changes in laws regulating admissions to the bar, and by means of which the ignorant, and, it is said, the unprincipled, were launched on professional experience and temptations in extraordinary numbers, without preparation of any suitable kind. The statement is widely published to our discredit by fellow countrymen of our own, and without meeting with denial, that a wiser and more virtuous superintendence is practised in England and in France; and, as a natural and necessary consequence, that the sources from which the profession must be supplied have been kept more pure and honorable in those countries than in the United States.

Without assuming the responsibility of endorsing such a view, it may be safely asserted that the true instrumentality for improvement in our country now is, as it has always proved to be elsewhere, the school of law.

It is shown in the history of Virginius, that schools where the Laws of the Twelve Tables were publicly taught, were to be found in Rome as far back as the fifth century before the advent of our Lord. A course of legal study, lasting five years in place of four, was prescribed by the Emperor Justinian for

*See Committee's Rep. N. Y. Bar Ass'n, pp. 11-13.

students of the law. Every care was extended to them and to professors of law; and, on considerations of public policy, it was forbidden to hold schools of law except at Rome, Constantinople, and Berytus. Justinian designated the latter city as *The Nurse of Legal Science.* Through schools of law, established by favor of government, first at Bologna, and springing up later in other places in Italy and in France, knowledge of the civil law was restored to Europe on the re-appearance of the Pandects (A. D. 1135). Winerius (or Irnerius), Martinus of Cremona, Bulgarus, of the golden mouth, *os aureum*, and his successors, Accursius and others were professors of it. (A. D. 1135–1229.) (Pandectes Françaises, Vol. 1, p. 108, introduction). In 1149 Vacarius, a Lombard, went to Oxford, in England, founded there a school of Roman civil law, and delivered a course of law lectures. (Mackenzie's Roman Law, p. 35.) For a period of four centuries jurisprudence found congenial companionship in literature and poetry, and there was a diffusion of it in connection with them. Dante was born five years after the death of Accursius; Petrarch and Bocaccio were contemporaries of Bartolus, the wonderful jurist who was able to instruct in the law at the age of twenty; and fugitive Greeks from Constantinople, by raising the standard of learning in Italy, greatly improved jurisprudence. Angelus Politianus the friend and protége of Lorenzo de' Medici contributed powerfully to join classical literature with the study of the law. The sixteenth century is remarkable for legal luminaries, Duarenus, professor of Roman law in Paris, Doneau, Zasius, professor at Freiburg, Hotomannus, Brissonius, and above all Cujacius, the professor of Bourges, whose renown in the schools was so great that at mention of his name every one took off his hat. His works, so to speak, revived the writings of *all* the ancient jurisconsults. Andreas Alciat deserves to be mentioned. He attracted as a professor an incredible number of students of the law in different countries. He taught first at Pavia, afterwards at Bourges, a second time at Pavia, then at Bologna, and finally at Ferrara. Francis I of France and the duke of Milan

contended for the glory of possessing him as a great instructor in the civil law.

The Roman law was cultivated with great success in Spain and the Netherlands, especially after the sixteenth century. Grotius, Vinnius, Huber, Voet, Everard Noodt, Schulting and Bynkershoek are names of great civilians. The law professors of Holland, in the seventeenth century, attained the highest reputation and attracted large crowds of students to Leyden and Utrecht.

More than a century (A. D. 1696–1699) after the death of Alciat, d'Aguesseau exclaimed in a burst of eloquence: "The profession of the law is as ancient as justice, as noble as virtue itself. But it necessarily results that it calls for all the solicitude of government. It concerns too closely the fortune, the honor, and the life itself of citizens to be left neglected. Those, whose purpose it is to practise it, ought to be held to make proof of their studies, of their capacity, of their good morals, and of their probity."

On the continent, Heineccius, the German, who died at Halle in 1741, earned great reputation and authority as a professor of law. It was the professorship in the University of Orleans which furnished Pothier, whose genius was not unlike that of Heineccius, the coveted opportunity, seven years afterwards, for completing his wonderful work entitled *Pandectæ Justinianæ*. It restored order where confusion had prevailed, forged the chain to connect conclusions with the principles from which they are derived, spread light amidst the surrounding darkness, and earned for its author universal fame and immortality. (French Pand., Vol. 1, Intro., p. 111. *Pandectæ Justinianæ*, Tom. Prim. Nov. Ed. Oratio, p. 4.)

In England the great Lord Mansfield held to the same view in this connection which is urged by the Committee. He attributed throughout life great importance to the proper instruction of students of the law, because this he thought advanced the public good. Lord Chief Justice Campbell says he consid-

ered, in common with other wise observers, that lectures and examinations afford the best opportunities for acquiring professional knowledge. Time fails the Committee to appeal to other examples, and to additional authority of modern date. It must suffice, in this place, to allude only to illustrious teachers of law of recent times, and of our own day in particular, in France, in Germany, in England, and in America. The countrymen of Pothier have hastened to follow his example, and have endeavored to emulate his fame as an instructor of youth. It is a difficult task to do them justice. Drawing their inspirations from the pure fountains of the Roman law, and the profound consultations which signalized the adoption of the Code Napoleon, and the subsequent development of its principles, they have treated the law with a degree of scientific method, a depth of knowledge and wisdom, and with a splendor of style and composition, which cannot fail to arouse admiration. Given considerably to controversy, they are in this respect not unlike the jurisconsults of Rome, but like the latter, they keep always present before them the dignity of the texts they are called on to expound. They do not treat them like mere advocates, but discourse in the impartial spirit of great jurists searching after truth. They have advanced the law as a science, and afford safe guides in reasoning, and authority to courts of justice.

In Germany, in the nineteenth century, the noble ardor of the sixteenth has been rekindled. The teaching of the jurists of the Historic School is, that *law is a growth and not a product*, and that it cannot be understood without scientific study of it from its beginnings. Lord Mackenzie (Roman Law, p. 44) gives as distinguished in this connection the names of Hugo, Haubold, Thibaut, and Niebuhr; and in our day Mackeldy, Marezoll, and Warnkœnig. Puchta, whose style has been likened to that of Chancellor Kent, Bruns, Gneist, Holtzendorff (afterwards professor at Munich) are illustrious in the history of the legal faculty of Berlin. Mommsen, Zachariæ, Schlessingen, and Maxen are identified with that of Göttingen. Frederick Charles Von Savigny, who died in 1861, famous as the historian of the Roman

law for the period of the Middle Ages, was a professor at Berlin; and Charles Von Vangerow, author of a treatise on the Pandects, pronounced to be admirable, was a celebrated lecturer, and professor of Roman law at the university of Heidelberg.

In our own time few persons show any disposition to question the conclusion of Lord Mansfield. There can be no more valuable opinion concerning it than that of Judge Story. He considered it manifestly correct, and characterised the one opposed to it as a *delusion*. (Misc. Writings, pp. 91, 92.) He was himself a learned and greatly distinguished professor, and all his abilities and all his views inclined him constantly and strongly to the right side.

There is little if any dispute now as to the relative merit of education by means of law schools, and that to be got by mere practical training or apprenticeship as an attorney's clerk. Without disparagement of mere practical advantages, the verdict of the best informed is in favor of the schools.

The benefits which they offer are easily suggested, and are of the most superior kind. They afford the student an acquaintance with general principles, difficult, if not impossible to be otherwise obtained; they serve to remove difficulties which are inherent in scientific and technical phraseology, and they as a necessary consequence furnish the student with the means for clear conception and accurate and precise expression. They familiarize him with leading cases, and the application of them to discussion. They give him the valuable habit of attention, teach him familiar maxims, and offer him the priceless opportunities which result from contact and generous emulation. They lead him readily to survey the law as a science, and imbue him with the principles of ethics as its true foundation. "Disputing, reasoning, reading and discoursing" become his constant exercises; he improves remarkably as he becomes acquainted with them, and attains progress otherwise beyond his reach.

If, then, the schools of law in America were what they ought

to be, every advantage which is attainable would be offered by them. They would prepare the young men ambitious of a professional career, systematically and scientifically, and year after year add them in sufficient number to the ranks of the profession.

Unfortunately, however, this is not the case. The Committee do not desire to discredit those seminaries of legal learning which have constantly striven for improvement, and which in the face of many adverse obstacles, trials, and discouragements, have always endeavored to advance the standard of professional studies and attainments. Let it be remembered to their honor that there are such schools, and let it be hoped that their example may serve to inspire others. It is only just to add here that rare as didactic efficiency and ability in law lecturers are well known to be, the United States are able to point to a number of such distinguished for the highest degree of success.

But it is difficult to deny that there are American colleges not deserving of commendation. Institutions where the course is unjustifiably limited and circumscribed; where the term of study is evidently too brief for useful purposes; where students continue to be invited, when they are unfit by reason of deficient education and want of contact with liberal studies, to wrestle with the difficulties of the law; where, in a way unworthy of the cause of legal learning, a spirit of competition to attract greater numbers than are to be found in other establishments, is allowed to obtain control; where examinations, which are such only in name, take the place of a searching scrutiny of the student's acquirements; where there is no connection with any influence, except that of a faculty insufficient to meet the demands of a progressive time; where there are no exercises sufficiently serious to try and develop the abilties the student may have; and where degrees are thrown away on the undeserving and the ignorant.

The same abuses, with those just named, made themselves felt in France in the law schools, at the time when the co-exist-

ence of the customary and the written law of that country gave rise to so much confusion and difficulty. Uniformity in legislation is naturally the aim of great abilities; on the other hand, the contemplation of it is overwhelming to inferior minds. The enactment of the Code Napoleon was an era in the history of the law. It gave order and symmetry to French jurisprudence, and fulfilled the best anticipations. Civilization received lasting benefits, mankind were improved, and the science of government progressed. Legal education naturally felt the change. It immediately attracted attention, and there arose a demand for reform, and for a better legal training. Methods of instruction in the law schools were scrutinized, just as they are examined at the present time in our country, and were subjected to similar criticism. A higher standard was insisted on for legal education, and the ways of reaching it investigated and discussed. Why is it—the French jurists argued—and argued unanswerably—that, while a physician is compelled to prove his professional qualifications by a diploma, government does not enforce a similar test in the case of the candidate for the privileges of a practising lawyer? (Pandectes Françaises, Vol. 1, pp. 2, 21, 247.)

France made provision for the organization and support of her schools of law. According to the law of March 13, 1804, Art. 1, (23 Ventôse, An XIII,) to date from September 21, 1809, (1 Vendemiaire, An XVII,) it was prohibited for any to practise the calling of a lawyer before the courts without having duly presented his diploma, or his letters as a licentiate in law (licencié en droit), procured from the universities. The ordinary course of study was three years. The professors were to conduct the examinations, but in the presence of State Inspectors. The latter reserved to themselves the right to examine. Code Universitaire pp. 59, 60, 61.

The discussions in England, in 1872, both in and out of Parliament, on Lord Selborne's bill for the establishment of a general school of law, showed the prevalence, it is claimed, in that

country of an equally strong and enlightened public opinion and to the same effect. The bill made the certificate of the examiners of the school essential to admission to the bar. Rept. Comm., N. Y. Bar Ass'n, New York, 1876, p. 20.

In Germany no one is admitted to the bar who has not been through the full university course, and this of itself presupposes the gymnasial course.

A faculty is a number of learned men in a college, associated together for certain objects. Entrusted with the interests of knowledge they are invested with honorable functions and titles, and have the right of bestowing privileges and degrees upon others. To secure this, corporate powers are given, and in the case of the American law schools there has been special legislation in their behalf, whereunder graduates are admitted to practice without examination in the courts. If, as the Committee hope, the usefulness of the schools is to be universally acknowledged, and their authority in the end made essential as a qualification for practising, they must be brought into a closer sympathy and contact with the profession than is now to be found, and submit to restraints which the necessity of the case make indispensable. It is unjust to students, and a fraud on the public, to recommend them as practitioners until they reach some creditable degree at least of skill and knowledge. As the requirements of a better legal education make themselves felt, proper steps to reach it must be taken, and those of our colleges which may neglect them, will not only suffer by comparison with others where the spirit of progress controls, but also serve to bring in danger the privileges which it is the interest of all to render secure.

As a general thing considerable attention is given at the present time in the schools to the local municipal law, the law of contracts, and of real estate, equity jurisprudence, commercial law, evidence, and pleading. And it may be conceded, without affecting the position assumed by the Committee, that the instruction in the branches referred to is all that it ought

to be. But the same praise cannot be justly given in relation to other studies: that is, it cannot be said that, generally speaking, they have in the United States a due share in courses of instruction. Reference may be here made to the study of the Roman civil law, public law, the maritime law, comparative jurisprudence, constitutional history, and political science.

It is believed, for instance, that, unless in exceptional cases, our law schools have never, for any considerable period, furnished students with the opportunity to be derived from a full scientific course upon the Roman civil law. The statement of such a fact is itself one of the most unfavorable commentaries that the subject affords in relation to legal training in this country. Indeed, no excuse can be made for it. The civilians by whose labor the jurisprudence of this country has been strengthened and adorned—Story, Kent, Ware, Livingston, Duponçeau, Martin, Moreau-Lislet, Roselius, and others—have been followed by few teachers, where there ought to have been many. The loss to learning which has been suffered as a consequence it is impossible to estimate. Perhaps some idea of it, however imperfect, may be formed by referring only to the benefits which have resulted, even under existing circumstances, from the influence of the civil law. They are, of course, too numerous to be pointed out on the present occasion. Suffice it to say that the movement everywhere observable in favor of codification and the use of the symmetry and scientific accuracy of the Roman jurisprudence; simplicity in the execution of testaments; knowledge of the principles of procedure in the instance of courts of admiralty and maritime jurisdiction; the spread over the American States of the doctrine of partnership *in commendam*, and the rising liberality in the general law of partnership, are all traceable to the study of the civil law and the branches of learning with which it is allied.

Happily the ancient rivalry between the common law and the system of the civil law has no place in our American professional life. That life is too progressive, too liberal, and too

enlightened for it. It deals with actual and not with worn-out issues. American civilization appropriates advantages from whatever quarter they may come, and discards what is not suited to it. It resorted to the British Constitution for those institutions which it decided to adopt, but turned away at the same time from those which it did not approve. It must just as naturally instruct its youth in the learning of the civil law, which may be called for, as it will extend study of all kinds required by the growth and development of the national life.

Lord Hale lamented much that the Roman law was so little studied in England. Blackstone recommended the study of it, particularly to the young men of his day. Mr. Austin, in his work on jurisprudence, regrets that this study continues to be neglected in England, and that the real merits of its founders are so little understood; and Lord Mackenzie confessed that Great Britain has contributed little to Roman jurisprudence.

It is not venturing too far to assert that what is thus said of Englishmen is of equal application to ourselves.

The civil law is a precious repository of legal principles. It embraces all previous philosophy. Founded upon natural reason, it appropriates the best institutions of all the nations which were conquered by the Roman arms. It collects everything relating to what is honest and just; to the boundaries between right and wrong; to the regulations of public morality, and to the government of republics, known to the Greeks, and treated by them as merely speculative science, and makes of the whole the foundation of the Roman law. It is the *palladium* of the rights of property, and furnishes the most certain rules of interpretation. It offers solutions for all the difficulties which the complex character of human affairs gives rise to. It has given civilization to Continental Europe, and prevails there as the basis of the general continental system. Without acquaintance with it that system cannot be understood. The ancient writers upon this law are remarkable for courtesy, urbanity and fairness, and at the same time

for brevity, simplicity, clearness and truth. They are also models of erudition and style, talent and genius. Without it the works of the great modern jurists of France and Germany are absolutely inaccessible. It embodies the remains of ancient juristical literature. It presents a model of scientific method and arrangement confessedly superior to any other: it supplies much of the language of international law and diplomacy, and a great part of equity and of the common law itself is derived from it. The laws which make it up, are not acts merely of power and authority, but of wisdom, reason, and justice. Cicero says it contains something divine, whereby it surpasses all the works and maxims of philosophers.

What Judge Story observed of foreign jurisprudence in general may then be truly and wisely said of the civil law. There is no country on earth which has more to gain than ours by the study of it.

The broken columns still mark the place where the Roman forum once stood. They recall to every beholder the undying eloquence with which the accents of Cicero breathed and burned. The walls of the coliseum also remain to attest the Roman grandeur. These are, however, material witnesses only, and their destiny is to pass away. In the end, the pillars, as well as the remains of the great circus, must crumble into dust and vanish from sight. But it will not be so with the laws in the *Corpus Juris Civilis*. They will remain forever, and be handed down to posterity, by ourselves, in the same way they were given to us. They are then the most lasting, they are the only imperishable monument of Rome. Well might the Roman legislator have exclaimed:

> Exegi monumentum ære perennius,
> Regalique situ pyramidum altius.

The Committee do not find themselves able to commend the thoroughness with which instruction in public law is generally given. They venture to state that the student who reports

himself as having followed the course most frequently prescribed on the law of nations, is usually furnished with no satisfactory acquaintance with it. He may have read, but if he has, his reading has been to little or no purpose. He has gone over the field, but has not gathered. He has not digested his reading, and cannot apply it. It is impossible for him to retain it. He knows no book at all and cannot stand examination. Vattel is the author most frequently put in the hands of the beginner. He is a widely admired writer, and certainly one of the most elegant; time has been when he was, perhaps, the most popular. His work is, however, open to much criticism. It might be out of place to repeat it here, except for the fact that this is the time and the proper opportunity for opposing objections to the method of proceeding in the schools, and the text books they see fit to adopt. Vattel is deficient in philosophical precision. He discusses his topics often tediously and diffusely, and does not support himself sufficiently by precedents, which underlie the positive law of nations, or what is, practically speaking, the most important part of the law.

The Committee have said enough, on the highest authority, in relation to Vattel (Kent, vol. 1, Lect. 1), to show that his work is not suitable as a text book for the student. It is not necessary to add that there are others of easy access, and writers in particular, who, on account of their national origin and connections, enforcing as they do the lessons of history by the force of American example and authority, are for evident reasons to be preferred.

It is sometimes difficult to combat with success in the student of the present time, the proneness which he exhibits for what he assumes to be practical. He is fluent, and imagines, therefore, that he is eloquent. He wants to make haste, and when he does so he thinks he makes way; he wants to make money; he covets political office, and mistakes it for public honor; he is pressing to be called a lawyer, and impatient of all restraint. A main use of the school of law is to correct these tendencies.

To have it brought home to the student that law is a science, and not an empirical art, and to teach him that any success worthy of being mentioned can only be reached by an acquaintance with liberal studies. It is submitted, indeed, that no part of legal training deserves to be more strongly insisted upon, and that no study can be made, properly speaking, more available in this connection than the law of nations.

The foundation and history of that law, and the connection with it to be found in the growth of the United States as an independent nation, and the development of the principles of the constitution; the rights and duties of nations in a state of peace; the declaration and other early measures of war; the various kinds of property liable to capture; the rights and duties of neutrals; the restrictions upon neutral trade; truces, passports, and treaties of peace, and offences against the law of nations, all are topics, acquaintance with which the Committee find no hesitation in pronouncing to be essential to the proper character of the American lawyer.

It ought to be the part of colleges of law to embrace and extend opportunities for instruction. It is a reproach if they decline them. Youth is the season for forming character, and there is no danger whatever in this time of the world, and in this country in particular, that the influences to which young men are submitted may not tend to make out of them persons sufficiently practical. The student of law is best fitted for his great profession whose education has been most exalted. Public law follows naturally upon academic culture. It is free from the technicalities with which other branches of science are crowded. From the foundation of it by Grotius, it has attracted the most free and elevated minds. To mention no others, in our own country it is identified with the illustrious names of Hamilton and of Webster. It teaches the duties of patriotism by precept and example. It is the true key to general learning and correct political observation. History, philosophy, morals, and religion have contributed to establish and develop it, and

continually to advance it is a chief privilege of the age in which we live.

The attention hitherto given to admiralty and maritime law by the law schools in general, does not, in the opinion of the Committee, entitle them to praise. On the contrary, this must be similarly spoken of with the study of the Roman law. A more remarkable condition of things is difficult to describe. While this branch of jurisprudence has changed and grown in the United States, perhaps beyond any other in the same given time, the schools of law have left it comparatively unexplored, or for the most part, at least, entirely untaught. When the maritime power and destiny of the United States are considered; the great extent of their sea coast; their carrying trade; their commercial intercourse with nations on this continent and across the sea; the importance of their maritime cities; their great inland seas; the unequalled length of their interior water courses; the extension of their jurisdiction over them, and the communication kept up upon them between the different States of the Union, and the wealth and enterprise which are embarked in maritime adventure of every kind, it is almost impossible to understand why it is that it has not been thought just as proper to instruct in the principles of this law as in the municipal law itself.

If the committee were to speak in a practical sense only, they need not hesitate to ask whether any knowledge is apt to be more important to the practising American lawyer, living in a commercial city, than that which relates to the rights and duties of masters and seamen, to material men, mariner's wages, bottomry bonds, contracts of affreightment, salvage, general average, ownership in vessels, surveys of them, collisions, pilotage, wharfage, towage, contracts for the conveyance of passengers, and agreements of consortship?

The reformer of legal education will see here much food for reflection. He will perceive at the same time the necessity for action. The maritime law has reached in our time the pro-

portions of a code of solid and magnificent structure. The learning which underlies it, cannot be too much dwelt upon and understood. Why has it not been suitably taught? Why are so-called Bachelors of Law rushed in such numbers through the schools without any adequate information concerning it?

Besides its many other resources, modern jurisprudence is enriched with the learning of the ancient maritime laws. Their origin was had in the wants of mankind for convenience and security, and when commerce came to distribute among all nations the same arts and customs, maritime commerce looked for and required the enforcement of contracts to which it had given birth, and perfected maritime usages and laws. A knowledge of them is most valuable, and must be cultivated. They are identified with the earliest approaches of civilization, and pervaded with a similitude which offers a striking contrast with civil laws. Experience has tested them, and their usefulness is established. The poet, the scholar, the historian, the philosopher and the lawyer have joined in celebrating their genius. The legislation of civilized countries everywhere, at present, rests in a measure upon them, or recognizes them; and admiralty judges at home and abroad continue to quote, expound, and apply their principles. "*Hæc studia adolescentiam alunt, senectutem oblectant; secundas res ornant, adversis perfugium ac solatium prebent; delectant domi, non impediunt foris; pernoctant nobiscum, perigrinantur, rusticantur.*"

In England it was the glory of Lord Mansfield that he broke down the barriers of former prejudices and infused into the common law an attractive equity unknown to his predecessors. He invigorated and enriched his noble intellect with the study of the Roman civil law. He was also possessed of the soundest principles of the marine law. He was versed in the writings of the maritime continental jurists, Cleirac, Roccus, Straccha, Santerna, Loccenius, Casaregis, and Valin. He incorporated the maritime jurisprudence into the law of his own country, referring to the Rhodian law, to the Consolato del

Mare, Les Jugemens d'Oleron, and the writers upon these, to solve the difficulties not settled by English precedents. Above all, he never wearied of consulting the marine ordinances of Louis XIV.

It was to this same great system of law, regulating as it does the commerce, the intercourse, and the warfare of mankind, that the admiralty Judge of our own country, Judge Story, pronounced a splendid tribute in the decision in the case of De Lovio *vs.* Boit (2 Gallison, 398), a decision which established the maritime jurisprudence of the United States, and which has been followed by the Supreme Court itself down to the present time. The reasoning of it never has been answered and it will always stand as a monument of judicial wisdom.

The Committee are unwilling to prolong discussion beyond the limits which properly belong to an occasion like the present. They can only note some of the prevailing faults in legal education; others will suggest themselves naturally. In their opinion, however, they would omit the discharge of an important part of their duty, if they did not point to the deficiency in legal training, which appears in the United States in the department of comparative jurisprudence.

If ever there was a country in which it was important "to compare the different codes of nations and of States, and to trace their differences to differences of origin, climate, or religious or political institutions, and to exhibit, nevertheless, their concurrence in those great principles upon which the system of human civilization rests," it is our own. Everybody must perceive the truth of such a statement, and yet the schools of law have failed to act in the premises. The American lawyer, who finds himself called to the national legislature, or to argue in the national courts, and especially when he is elevated to the national bench, is surrounded at once by embarrassments which are most trying. In the locality from which he came, he knows the jurisprudence. He has grown with its growth. It is homogeneous in its material, and deals with questions with

which the profession is familiar. But in the new field to which advancing years and honors bring him, every thing is changed. Instead of the laws of a single State in which he was brought up, he is at once plunged into the jurisprudence of thirty-eight States, differing materially in habits, customs, laws, and judicial interpretation. Circumstances compel him to the study of doctrines which are new to him, and to which his best endeavors fail to enable him to do justice. He comes to his task too late, because he comes to it all unprepared. The case may be worse, owing to the same causes. He adopts errors because he is unable to discover them, and makes a record of judicial wrong.

This picture is not indebted to fancy. Unfortunately it deals with naked truths. The past has of course escaped us. The errors which belong to it are numbered with the days which are departed. Nor may it be the part of wisdom to dwell unduly upon these. We cannot say, however, that they were inevitable; and we would be false to ourselves to abandon future opportunity. The remedy for the case is in true reform. It is in bringing the schools of law to the accomplishment of their true mission. This is to enlarge and expand their course of studies. To open the way to the assimilation of state laws and institutions by intelligent comparison. By elevating themselves to elevate their pupils. By giving a national example in advancing legal education, which will reach further than any other means to develop the true national character and the best civilization. When the time comes that the schools of law do this, but not until then, it will be justly said that they have been directed "*Ad rempublicam firmandam, et ad stabiliendas vires et sanandum populum.*"

What they stand in need of now is a firm and stable establishment, one that is conceived with wisdom, and above all in the enlarged and liberal spirit of recent improvement, steadily and vigorously administered, to provide for future usefulness.

The method of instruction which prevails is by lectures and expositions. The manner of teaching is the same with what it

was when law schools were first established. Lessons of professors, either read or delivered without writing, to an attentive student may prove to be invaluable fountains of wisdom and knowledge; but the force of truths thus inculcated, and the principles of sciences taught only in this way, are often lost and prove fugitive and evanescent. It is a useful practice, deserving of more observance than it has received, for the lecturer to recapitulate frequently. He ought to begin by a summary of what was said at the last lecture, and conclude by a similar rehearsal of the lecture just spoken. Keeping up this exercise throughout a course is productive of many advantages. The student comes himself to take a comprehensive view. He is relieved from painful attention to details and the enumeration of authorities. He gets all the advantages of repetition, without the drawbacks which usually attend it. He is taught to condense for himself, and his attention is occupied, his reasoning powers kept actively employed and inflamed, and his imagination entertained by the felicitous introduction, illustration, and general presentation of legal topics which this way of teaching gives rise to.

Such a method of instruction, it will be said, is arduous, and exacting of all the best powers of a professor. So it is. But the plan itself, it cannot be denied, is an admirable one. The Committee would give it even a wider application than it can receive at the hand of those who are called on to do the part of professors. They ought to be aided by competent tutors, examiners, and scientific practical instructors, who will recapitulate the lectures, and thus drill the student in everything essential to make him thorough. Young men eager for the professional distinction of becoming professors themselves, would in this manner form a connection with the faculty of law which must become mutually beneficial. Future graduates of distinction would in their turn become candidates to be examiners. The ties which join alumni with their *alma mater* would be drawn closer, and every natural opportunity afforded for doing what experience proves is necessary for the good of all

colleges, introducing into their daily life and existence, their character and their system of government, the presence, influence, and intelligent coöperation of graduates while the latter continue in the prime of life.

Enough has been said to show that the Committee do not disparage merely practical advantages. On the contrary, they would have the student enjoy them to the fullest extent. But what is insisted upon is, that instead of being incompatible with education in the law school, such advantages are entirely in harmony and in accord with them.

A school organized on the plan suggested would have the means at hand, and ought to make it its duty constantly to enforce proper practical exercises of every kind. Moot courts would be held as a matter of course. Besides these, students would be required to frame bills of indictment, to prepare bills in chancery, to draw up libels in the admiralty, to make correct forms of wills of different kinds, and to write legal essays or opinions upon such topics of professional interest as might be required. Carried on in the presence of the class, these and similar exercises, useless to be enumerated, would serve to stimulate a proper spirit of emulation, and necessarily to produce practical skill. Attendance upon the courts is evidently as easy for the student in the law school as it is for the attorney's clerk, and there is no reason why such a clerk should not also have the privileges of lectures.

It is not considered necessary to argue the merits of written examinations as a final test required for graduation. Those merits are now generally admitted, and any colleges which will hereafter neglect to adopt such examinations, must be contented to give place to others who aim at a higher standard of excellence. Oral examinations are necessarily limited. In a large school they must be a great deal too much so. Experience has shown that they have been for the most part loosely and inartificially conducted. The character of them is notoriously superficial. They are unsatisfactory and inadequate. They are the lotteries

in which the lucky alone draw prizes. They are disastrous to the modest student, and often the ruin of the most deserving. Courts of justice are necessarily without the leisure to hold any other examinations than such as are oral. Even for these they frequently show little inclination. They are not constituted to act the parts of didactic lecturers and public examiners, and ought to be excused from them.

The written examination paper is deliberately and methodically prepared. It naturally becomes searching. The examiner easily makes it comprehensive. The student receives it in the most suitable way. He has leisure to answer, if he can, and room for the display of all the ability he may possess. His performance takes the shape of responses in writing. He cannot, in the nature of things, make them unless he is well informed, and all deception becomes impossible. Finally, all candidates are tried by the same impartial tests, and stand or fall according to real merit.

It follows, from what has been said, that honors ought only to be conferred on the really meritorious, and that the degrees of Bachelor, and that of Doctor, of Laws are to be admitted as evidence of the most satisfactory kind of creditable attainments and abilities. The faculty permitted to grant these ought to be practically unanimous, and sufficiently numerous by their constitution to afford such a course of instruction as is in contemplation of this present report. Faculties of law so instituted and directed by this proper policy, must necessarily have great influence in the publication of works on law and judicial literature. The countrymen of Greenleaf, Story, Kent, Duer, and others, not to mention living authors in the Eastern, Western and Southern portions of our country, whose labors have aided the administration of justice and advanced the study of the law—benevolent spirits who have held aloft the torch of science—are not required to do more than point to experience in support of the views here presented. Given to the study of the law as a a science, professors must naturally push their examination of

its principles and general character beyond mere practitioners. The habit of lecturing most frequently brings about the recording or writing down of the lectures. As year succeeds to year, session to session, the professor accumulates material which he would most probably never have collected otherwise. Stimulated by praiseworthy emulation with other teachers, and matured by continued revision, his works are finally given to the press. The profession find them useful, and introduce them into the courts. They become naturally incorporated into the decisions of our own country, and become familiar to the jurists in foreign countries. In this way we have seen "in our generation copious and salutary streams turning and running backward, replenishing their original fountains, and giving a fresher and brighter green to the fields of English jurisprudence."

The progress of this country in the law was, before the American Revolution, only slow. When the struggle for independence was terminated, it became remarkably rapid. (Story's Misc. Works, p. 211, 212). And in our own day, the mass of the law has accumulated with such extraordinary and incredible rapidity as to make the labors of the student almost overwhelming. What would become of him but for those examples of profound research, of marvelous generalization, and of scholarly merit and beauty, which learned professors from their retirement in the shades of collegiate life have furnished their toiling brethren, whose more active lot it is to contend in the halls of justice?

It is a laudable object of the resolutions referred to the Committee to maintain such colleges of law as are already well directed; to strengthen those that are contending for better things, and to raise up such as may be unhappily in danger of failing in their high mission; to give symmetry to legal education as a system; to have it advance and reach, as far as practicable, homogeneity, and a common standard; to inspire the youth who would enter the profession, as well as those who are designed for public life (*ad gerendas res*), with ardor in the pursuit of the law, as well as true emulation, by holding up to them suitable rewards.

The spirit of the resolutions evidently reaches still further. It would be impossible for the Committee to exalt it unduly, if they would. It connects the resolutions with the cause of general learning and with true Americanism. It assumes, as is right, the intimate relation of education and professional character, and the indispensable connection which exists in a country like our own between public virtue, liberty, and the law.

The institutions of free government require education. Ignorance is the parent of slavery. Absolute power will not tolerate enlightened inquiry or true liberty of discussion. These must endanger and destroy it. It banishes emulation and restrains learning. It appeals at once to fear, and, speedily corrupting those themselves who wield it, enforces the arbitrary and depraved edicts of tyrants upon servile submission.

Monarchies cherish the arts of life and the growth of retirement. Montesquieu says they are schools of what the world calls honor. But the undue elevation of a single person must inevitably belittle all others. His habits, his wishes, and even his caprices, will frequently influence, if they do not control, the general education and character.

The case is different with republics. They rest upon equality, and depend for existence itself on the power of education. To maintain their rights, men must first learn what these are, and to practise patriotism be instructed in the duties of citizenship. A corrupt people cannot be free. Thus virtue is the parent of liberty and the main spring of free government.

But the best growth of liberty is the law. The product of order, it is a constant science. It vindicates the right and condemns the wrong; it upholds just authority, and forbids and punishes tyranny. It is the dispenser of justice; the exponent of public and private morality; the shield of innocence; the guardian of the defenceless; the comfort and consolation of the good, and the confusion of the wicked. By its regular course and operation, the fruits of peace are secured, and the evils of war are diminished and assuaged by it. Without it a republic is impossible. In the infancy of such a state, it takes

its rise in the right of every man to be exempt from the dominion of his neighbor, to be protected in person and property, and to the pursuit of happiness in his own way. When the path to public honors and legislative place is unobstructed, ambition is aroused, and impulse given to the noble pursuit of eloquence. While to frame and administer the laws which the progress of society gradually renders necessary, knowledge of every description, and legal knowledge in particular, is sought for and employed. Further guarantees for safety and convenience are exacted in proportion with the new wants of civilized life; and laws themselves, tested by experience, are amended and perfected. In this way—springing into being in the rude struggles of primitive independence, and nursed amidst the stormy tumults of popular discussion—liberal institutions are formed and developed. They are like the hardy oak in its native forests;—the withering heat of summer descends upon it; the ice and snow of winter cover it, and crown its high top; the soft breezes of the south breathe and whisper through its leaves; and its mighty limbs and branches are tossed to and fro in the heaving tempest and the whirlwind. Yet it stands alike in sunshine and in storm. Shaken to its very foundation, but planted by Almighty Power, its roots fix it in its site, striking deep down, and reaching far out into the earth. The clouds of heaven burst over it in vain: it breasts the rising flood, and turns it back, broken and shattered into idle foam! So it is with free governments. They brave the most trying seasons, and are invigorated by the changes and trials they are condemned to encounter. Surviving the perishing arts of life, the shifting fortunes of monarchs, and the fitful conflicts of faction, they afford the blessings of repose and security; and as the crowning glory of all their achievements, the priceless opportunities which ensue for extending the knowledge of mankind.

CARLETON HUNT, *Chairman*,
HENRY STOCKBRIDGE,
EDMUND H. BENNETT.

The Committee recommend the adoption of the following resolutions:

Resolved, That the several state and local bar associations in the United States be respectfully requested to recommend and further the enactment of laws for assimilating throughout the Union on principles of comity, the standing of members of the bar already admitted to practise in their own states, by admitting to equal rights and privileges as practitioners of law in the courts of all the other states those who have practised for three years in the highest court of the state of which they are citizens.

Resolved, That the several state and other local bar associations be respectfully requested to recommend and further in their respective states the maintenance by public authority of schools of law, provided with faculties of at least four well paid and efficient teachers, whose diploma shall, upon being unanimously granted, after a full and fair written examination, be essential as a qualification for practising law.

Resolved, That the said state and other local bar associations be respectfully requested to recommend and further in such law schools a general course of instruction, to be duly divided, for ordinary purposes into studies and exercises of the first year, of the second year, and of the third year, including, at least, the following studies:

I. Moral and Political Philosophy.

II. The Elementary and Constitutional Principles of the Municipal Law of England; and herein:—

1st. Of the Feudal Law;

2d. The Institutes of the Municipal Law generally;

3d. The origin and progress of the Common Law.

III. The Law of Real Rights and Real Remedies.

IV. The Law of Personal Rights and Personal Remedies.

V. The Law of Equity.

VI. The Lex Mercatoria.

VII. The Law of Crimes and their Punishments.

VIII. The Law of Nations.

IX. The Admiralty and Maritime Law.

X. The Civil or Roman Law.

XI. The Constitution and Laws of the United States of America, and herein of the jurisdiction and practice of the Courts of the United States.

XII. Comparative Jurisprudence, and the Constitution and Laws of the several States of the Union.

XIII. Political Economy.

Resolved, That the said state and other local bar associations be respectfully requested to recommend and further in such law schools the requirement of attendance on at least the studies and exercises appointed for said course of three years, as a qualification for examination to be admitted to the bar.

REPORT

OF THE

TREASURER.

Saratoga Springs, August 20, 1879.

The Treasurer submits the following Report of the finances of the Association for the year ending Tuesday, August 19, 1879.

The receipts have been as follows:—

Annual dues of members for the year ending August, 1879,	$1,035 00
Exchange on remittance,	0 10
Annual dues for the year ending August, 1880,	30 00
Total receipts,	$1,065 10

The expenditures have been as follows:

Expenses incurred at the time of organization,	$52 40
Postage,	48 65
Stationery and blank books,	11 21
Printing (miscellaneous,)	47 25
Printing 2,000 copies of proceedings of first meeting,	127 00
Clerk hire during the year,	30 00
Express on books, &c.,	4 82
Sundry expenses, telegraphing, &c.,	8 90
Total,	$330 23

The balance now remaining in the treasury, after paying all bills for the first year, is . . $734 87

Respectfully submitted,

FRANCIS RAWLE.

Treasurer.

THE THIRD ANNUAL MEETING will be held at Saratoga Springs, New York, on August 18th, 19th, and 20th, 1880.

REPORT

OF THE

THIRD ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD AT

Saratoga Springs, New York, Aug. 18, 19, and 20, 1880.

PHILADELPHIA:
E. C. MARKLEY & SON, PRINTERS, No. 422 LIBRARY STREET.
1880.

CONTENTS.

	PAGE.
Proceedings of the Meeting,	5
Constitution,	50
By-Laws,	54
Officers,	57
Committees,	62
Members,	64
President's Address,	81
Paper by Henry E. Young,	109
Address of Cortlandt Parker,	149
Paper by George Tucker Bispham,	167
Paper by Henry D. Hyde,	187
Treasurer's Report,	201

PROCEEDINGS OF THE THIRD ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD IN

Putnam Hall, Saratoga Springs, N. Y., August 18th, 19th and 20th, 1880.

1. LUKE P. POLAND, of Vermont, Chairman of the Executive Committee, called the meeting to order about 10.30 A. M., on Wednesday, 18th August, and introduced BENJAMIN H. BRISTOW, the President of the Association, who delivered the opening address. (*See Appendix.*)

2. On motion of Carleton Hunt, of Louisiana, the thanks of the Association were rendered to the President "for his very interesting, instructive, and exceedingly able address."

3. The President then said the next business in order will be the nomination and election of new members.

4. Mr. Poland, as Chairman of the General Council, said:

MR. PRESIDENT:—We have experienced a little embarrassment with reference to the method of nominating and electing new members. The Constitution provides that "all nominations for membership shall be made by the Local Council of the State to the bar of which the persons nominated belong," and the General Council are authorized to recommend the admission of members from States having no Local Council.

We have found that the general acceptation of the provision is, that application is to be made at the annual meeting of the Association here. It has happened in several instances that

no Local Council has been present, and therefore, as the Constitution is to have either a narrow or a strict construction, if there is a Local Council in existence the General Council cannot act in such a case, and applicants for membership could not be admitted.

The General Council, therefore, not wishing to assume a power not in their province, propose to amend the Fourth Article of the Constitution by adding to the second paragraph thereof the words, "and at the annual meeting of the Association, in the absence of all members of the Local Council of any state."

This amendment was then adopted.

5. Mr. Poland, as Chairman of the General Council, then presented the following names for membership. In no case was a ballot demanded, and the gentlemen whose names were proposed were elected by a *viva voce* vote of the meeting, in pursuance of the Constitution.

ARKANSAS.

COHN, M. M	Little Rock.

DISTRICT OF COLUMBIA.

BOND, S. R.	Washington.

GEORGIA.

JONES, JR., CHARLES C.	Augusta.
TOMPKINS, HENRY B.	Savannah.
BACON, AUGUSTUS O.	Macon.
HALL, JOHN J.	Griffin.
STEWART, JOHN D.	Griffin.
ANDERSON, CLIFFORD	Macon.

ILLINOIS.

CATON, JOHN D.	Chicago.
STORRS, EMORY A.	Chicago.
AYER, B. F.	

INDIANA.

ALDRICH, CHARLES H.	Fort Wayne.

KENTUCKY.

BENTON, JOHN C.	Covington.
BRECKENRIDGE, WM. C. P.	Lexington.
BUCKNER, B. F.	Lexington.
MUIR, P. B.	Louisville.
BIJUR, MARTIN	Louisville.
DAVIE, GEORGE M.	Louisville.
HUMPHREY, A. P.	Louisville.
TONEY, STERLING B.	Louisville.
THORNTON, ROBERT A.	Lexington.
CALDWELL, ISAAC	Louisville.

MARYLAND.

SMALL, ALBERT	Hagerstown.
COWEN, JOHN K.	Baltimore.
CROSS, E. J. D.	Baltimore.
TAYLOR, ARCHIBALD H.	Baltimore.

MASSACHUSETTS.

LONG, JOHN D.	Boston.
BROOKS, FRANCIS A.	Boston.
STORROW, JAMES J.	Boston.
CHANDLER, ALFRED D.	Boston.
BYNNER, EDWIN L.	Boston.
HOWE, ARCHIBALD M.	Boston.
TREADWELL, JOHN P.	Boston.
WENTWORTH, ALONZO B.	Boston.
HAYES, JR., WILLIAM A.	Boston.
ERNST, GEORGE A. O.	Boston.
SAVAGE, THOMAS	Boston.
ALLEN, STILLMAN B.	Boston.
FRENCH, WILLIAM B.	Boston.
HUNTRESS, GEORGE L.	Boston.
SOUTHARD, CHARLES B.	Boston.
CODMAN, ROBERT,	Boston.
ANDERSON, W. H.	Lowell.
MARSHALL, JOSHUA N.	Lowell.
RICHARDSON, GEORGE F.	Lowell.
STEVENS, GEORGE	Lowell.
ENDICOTT, WILLIAM C.	Salem.
GILLIS, JAMES O.	Salem.

MICHIGAN.

WELLS, WILLIAM P.	Detroit.
WEADCOCK, THOMAS ADIS	Bay City.
ATKINSON, JAMES J.	Detroit.

MISSISSIPPI.

ARNOLD, JAMES M.	Columbus.
ORR, J. A.	Columbus.
HOWRY, CHARLES B.	Oxford.
JOHNSTON, TOBY W.	Columbus.

MISSOURI.

RUSSELL, W. H. H.	St. Louis.

NEW JERSEY.

PARKER, R. WAYNE	Newark.
ALLEN, JR., ROBERT	Red Bank.

NEW YORK.

WARREN, IRA D.	New York.
TAYLOR, JOHN D.	New York.
MOAK, N. C.	Albany.

OHIO.

FORCE, MANNING F.	Cincinnati.
KITTREDGE, EDMUND W.	Cincinnati.
FERGUSON, E. A.	Cincinnati.
SHOEMAKER, MURRAY C.	Cincinnati.
LONGWORTH, NICHOLAS	Cincinnati.
JORDAN, ISAAC M.	Cincinnati.
GOTTSCHALL, WILLIAM	Dayton.

PENNSYLVANIA.

PORTER, WILLIAM A.	Philadelphia.
REED, HENRY	Philadelphia.
WAGNER, SAMUEL	Philadelphia.
BALDWIN, HENRY, JR.	Philadelphia.
MAC VEAGH, WAYNE	Philadelphia.
SMITH, A. HERR	Lancaster.
STEWART, W. F. BAY	York.
SLAYMAKER, AMOS	Lancaster.

SOUTH CAROLINA.

RUTLEDGE, BENJAMIN H.	Charleston.
BOYD, ROBERT W.	Darlington.

VERMONT.

LAWRENCE, L. L.	Burlington.
TUPPER, A. P.	Middleburg.
CLARKE, C. W.	Chelsea.

WISCONSIN.

CAREY, JOHN W.	Milwaukee.

6. Messrs. A. G. McGrath and Charles H. Simonton attended the meeting as delegates from South Carolina.

7. Mr. Poland, for the Executive Committee, recommended the following amendments of the By-Laws of the Association:

(1.) By-Law No. IV. to be amended so as to read, "In states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number."

(2.) An additional By-Law, as follows: "The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee."

Both of these amendments were then adopted by the Association.

8. Agreeably to the foregoing provision, the Chairman of the Executive Committe appointed as such auditors, Wm. Allen Butler, of New York, and O'Brien J. Atkinson, of Michigan.

9. The same committee recommended an additional By-Law, as follows: "Extra copies of Reports, Addresses, and Papers read before the Association, may be printed by the Committee on Publication for the use of their authors, not exceeding two hundred copies to each of such authors."

This amendment was adopted.

10. The next business in order being the election of the General Council, nominations were made, and the members of the Council elected.

(See List of Officers at the end of the Minutes.)

The Secretary's Report.

11. Edward Otis Hinkley, Secretary of the Association, then presented his Report, as follows:

MR. PRESIDENT AND GENTLEMEN:—Following the principle adopted last year, I shall make a brief verbal report:

The actual number of members of the Association is about 350, not including those elected to-day, which will bring up the number to about 450.

Previously to the present meeting, thirty-one states in all were represented in this body; the District of Columbia was also represented. Seven states of the Union were not represented, viz.: North Carolina, Texas, Oregon, Minnesota, Nevada, Colorado, and Wisconsin (now for the first time represented).

I mention these states, because there may be members present from adjoining states who may know persons in those states not represented, suitable to be nominated to this body. It is very desirable we should have representatives from all the states, if possible.

At our last annual meeting, in addition to the members present from the different states, three state Bar Associations were represented here by their delegates, viz.: Indiana, Illinois, and Nebraska.

In pursuance of an order of the Executive Committee, I have prepared and had printed a register of members, and it is highly desirable, for many reasons, that gentlemen attending should register their own names; the printing of their names accurately in the list of members will thereby be secured. It will also afford us facility in finding members at their respective hotels, should occasion require it, and inform us what gentlemen are in town in attendance at this meeting, and furthermore, it will facilitate our operations in attending to those gentlemen who should attend our annual dinner.

It is to be hoped gentlemen will take advantage of the opportunity afforded them at the reception rooms to form mutual acquaintances.

At our last meeting, as near as we can judge, there were a little over a hundred members present. Eighty-six persons were at the dinner. As near as we can estimate there appears to be a somewhat larger attendance this year.

One other matter only is a subject of special attention:

At our last year's meeting two committees reported, viz.: the Committee on Jurisprudence and Law Reform, and the Committee on Legal Education and Admission to the Bar. A third committee was excused from reporting, on account of the death of the chairman—that is to say, the Committee on Judicial Administration and Remedial Procedure, whose head, Mr. Gustavus A. Somerby, had died.

Two other committees did not report last year, and I have not been informed that they will report this year. I mention their not reporting, because it is desirable that they should do so, if possible. I refer to the Committees on Commercial Law, and on International Law.

The Committee on Publication probably think it unnecessary to make any further report than you find in the fact that they have published the Addresses, Papers read, and Committee Reports of last year's session, which are contained in a book of 237 pages.

The Committee on Grievances happily have had nothing to report.

The Secretary's Report was accepted.

12. The Treasurer presented his Report, with the certificate of the Auditors appended, which was accepted. (*See Appendix.*)

13. Skipwith Wilmer, of Baltimore, moved a vote of thanks to the Secretary and Treasurer, which was carried.

The meeting then adjourned until 7.30 P. M.

Wednesday Evening.

The President called the meeting to order at 7.35 P. M.

14. Mr. Poland stated that in consequence of the absence of several members of Standing Committees, it was desirable to fill such vacancies by temporary appointments.

To provide for such appointments the Executive Committee proposed the adoption of a new By-Law, as follows:

"If, at any annual meeting of the Association, any member of any committee shall be absent, the vacancy may be filled by the members of the committee present." Adopted.

15. The President then introduced Henry E. Young, of Charleston, S. C., who read a paper on "Sunday Laws." (*See Appendix.*)

The meeting then adjourned until 11 A. M. Thursday, 19th inst.

Thursday Morning.

The President called the meeting to order at 11 o'clock.

16. The Chairman of the Executive Committee proposed the following additional names for membership of the Association, all of whom were duly elected:

BENJAMIN, M. W.	Little Rock, Ark.
THOMPSON, SEYMOUR D.	St. Louis, Mo.
BLAIR, AUSTIN	Jackson, Mich.
HENDERSON, HENRY P.	Mason, Mich.
HUGHES, D. DARWIN	Grand Rapids, Mich.
TARSNEY, T. E.	East Saginaw, Mich.
BALL, DANIEL H.	Marquette, Mich.
MONTGOMERY, MARTIN V.	Detroit, Mich.
GEER, HARRISON	Lapeer, Mich.
KNIGHT, EDWARD B.	Charleston, W. Va.
MASON, JOHN THOMPSON,	Baltimore, Md.
MADILL, GEO. A.	St. Louis, Mo.
KEOGH, THOMAS B.	Greensboro, N. C.

17. The President then introduced Cortlandt Parker, of New Jersey, who delivered the Annual Address. (*See Appendix.*)

18. The President said:

The next business in order on the programme is the consideration of the resolutions recommended by the Committee on Legal Education and Admission to the Bar.

19. Carleton Hunt, chairman of the committee, moved an amendment to the resolutions, so that they should read as follows:

1st Resolution. "That the several state and local Bar Associations in the United States be respectfully requested to recommend and further the enactment of laws for admitting to equal rights and privileges as counsel in the courts of all other States those who have practised for three years in the highest court in the State in which they are citizens."

2d Resolution. "That the several state and local Bar Associations are respectfully requested to recommend and further in their respective states the maintenance, by proper authority, of schools of law, provided with faculties of at least four well-paid and efficient teachers, whose diploma shall, upon being unanimously granted, after a full and fair written examination, be a qualification for practising law."

3d Resolution. "That the said state and other Bar Associations be respectfully requested to recommend and further in such law schools, as soon as practicable, a general course of instruction, to be duly divided, for ordinary purposes, into studies and exercises of the first year, of the second year, and of the third year, including at least, the following studies:

I. Moral and Political Philosophy.

II. The Elementary and Constitutional Principles of the Municipal Law of England; and herein,—

1st. Of the Feudal Law;

2d. The Institutes of the Municipal Law generally;

3d. The Origin and Progress of the Common Law.

III. The Law of Real Rights and Real Remedies.

IV. The Law of Personal Rights and Personal Remedies.

V. The Law of Equity.

VI. The Lex Mercatoria.

VII. The Law of Crimes and their Punishments.

VIII. The Law of Nations.

IX. The Admiralty and Maritime Law.

X. The Civil or Roman Law.

XI. The Constitution and Laws of the United States of America, and herein of the Jurisdiction and Practice of the Courts of the United States.

XII. Comparative Jurisprudence, and the Constitution and Laws of the several States of the Union.

XIII. Political Economy."

4th Resolution. "That the said state and local Bar Associations be respectfully requested to recommend and further in such law schools the requirement of attendance on the studies and exercises appointed for said course of three years, as a qualification for examination to be admitted to the bar."

20. Mr. Hunt then said:

One or two remarks will suffice to bring this matter properly before the meeting.

Bearing in mind the diversity of ability and proficiency of different men, the committee was unwilling to insist upon any particular time, so that if a man were able to pass a satisfactory examination at any time, he should have opportunity to do so, and not be refused.

The resolutions are supported by an elaborate argument which is based upon reason and good authority, upon the action of governments, the advice of able jurists in foreign countries and in our own.

The committee are persuaded that with the modifications now proposed, such objections as have been made will be removed, and the resolutions as they stand will receive the unanimous approval of the Association.

The moral effect of such an approval cannot be overstated. Upon closer examination the resolutions will be found to be comprehensive in character and capable of general application. They will be found to be in no sense illiberal, and instead of imposing obstacles upon those who may be struggling with poverty in entering the legal profession, they will be found, on the contrary, to be advantageous, affording every indulgence and encouragement to that class of students.

I believe if the Association will act upon them in the spirit in which they are offered, it will take a step in advance, and tend to establish a desirable result. The work will necessarily be a gradual one, but this first step will be very beneficial.

With these remarks for the purpose of bringing the matter properly before the Association, I move the adoption of these resolutions as amended, and I move that they be taken up separately.

21. The President. Are there any remarks to be made upon Mr. Hunt's motion? I would call the attention of the gentlemen to the by-law which provides that not more than ten minutes is allowed each speaker.

22. James O. Broadhead, of Missouri, said: I do not wish to vote against all these resolutions, neither do I wish to vote without being heard briefly. I wish to propose a substitute for all the resolutions.

23. On motion of Rufus King, of Ohio, it was voted that the first resolution be considered separately.

24. Carleton Hunt then moved the adoption of the first resolution.

25. R. Wayne Parker, of New Jersey, said: I desire to oppose the adoption of the first resolution, because I cannot understand it. Does it mean that any lawyer from any state shall have the right, as a *right*, and not as a courtesy, to go to the courts of any other state, and by simply naming an attorney, as a form, conduct and carry on cases within that state. If so, I am opposed to that resolution. Courtesy is one thing, a claim of right is another. No court can properly administer justice which has not control of its own counsel, of their position, and of their powers at the bar. No court can administer justice which cannot trust their own counsel; no court can do justice between parties without having counsel subject to their own rules. That rule we have taken from the courts of the English Common Law; it is a rule which cannot be lightly laid aside.

I, therefore, submit I am opposed to the rule as it stands. I do not comprehend its scope. If it mean that gentlemen be admitted by courtesy, that courtesy, I believe, has never been withheld from any lawyer or counsel of ability in the United States; I think I speak the sentiment of those present. But if it mean that men shall be admitted to any state without examination as to their competency, I do not think this Association would be acting wisely in furthering a practice that would be pernicious and dangerous.

26. N. W. Ladd, of Massachusetts, said: We cannot regulate standards for admission to the Bar in a state of high standard by applying to it the practice of a state of the lowest standard. In many of the states they are trying to raise the standard, so that they may have lawyers well qualified in every respect to perform the duties devolving upon them. I think that effort is a laudable one, and that we should not do anything here that might tend to hinder the carrying of the effort into full effect. If any resolution of this kind is to be passed here, it should be in an amended shape. There is, of course, no objection to a lawyer who has practiced many years in one state, if he wishes

to remove to another state, being allowed to practice in the courts of that state, but if we do not have some amendment to these resolutions whereby the difficulty they present can be met, then the whole falls to the ground.

I would like to see some provision made whereby a certain term of years of practice in some other state shall be required in order to entitle a lawyer to admission in the state where he wishes to remove and practice, otherwise a young man who wishes to be admitted at the bar of one particular state, where the standard is high, may first be admitted in a state of low standard, and then by making application in the former state for admission can find the doors open to him. Such a practice would be wrong. I think that difficulty should be avoided, and something introduced into the resolution whereby it might be remedied.

27. A. R. Lawton, of Georgia, said:

I think it is rather a misfortune that this first resolution was separated from the others in this discussion. I understand the resolutions—all of them—to be the natural consequence of the report, or the recommendations of the report. I am not a member of that committee, but I do not suppose it was contemplated that every state in the Union would formally adopt the suggestions of those resolutions, and open their doors to admit to practice members of other state bars indiscriminately, but it proceeds upon the theory that the general features of that report shall be adopted, that the class of education for admission to the bar as contemplated by that report shall prevail, that that shall be the habit of the American people and the condition of the American bar, and when that is so, when the standard of perfection is high and uniform, that under the happier condition of things a member of the bar in one state shall be permitted to appear as counsel in every state.

The change in the resolutions that has been made by the committee, as I understand it, has been made in deference to some suggestions as to the power of the court over counsel—as

an acknowledgment and recognition, and a continuance of the power of the court over its counsel, referred to by the gentleman from New Jersey (Mr. R. W. Parker), that is to say, it is the opportunity to appear as counsel, and not to all the privileges of a member of the bar, as counsel in any case that may be pending, and not to appear as an attorney, or to perform those duties which require that the gentleman appearing shall be under the distinct power of the court. So that with the change made in the resolution, it means that a gentleman shall have an opportunity of appearing as counsel, and only in that capacity, and only then when the happier condition of things which seems to be contemplated by that report shall exist. Not now, when some of the states require almost nothing of an examination from applicants for admission to the bar. It did not occur to me when my friend from Ohio (Mr. King) made his suggestion, but it seems to me that to separate the first resolution from the rest of the report, or from the other resolutions, is to weaken its effect.

When the requirements embraced in the other resolutions shall be put into practice, and become general, then we can afford to ask the states to admit to practice as counsel, in any case, in the courts of such states, any gentleman who has been admitted in any other state upon the principles and basis, and the degree of education contemplated by this report. I think that is the aim of the committee, though, as I before stated, I am not a member of it.

28. George A. Mercer, of Georgia, observed that the words practitioner of law had been stricken out of the resolution, and the word counsel introduced. He did not think the resolution practicable in its present form. Suppose some one state should have a provision admitting women to practice, some states might be in favor of the principle, others opposed to it. Are we prepared to recommend that if one state admits women to the bar, other states should admit them to equal privileges?

Suppose one state admits a Chinaman to practice, are we

going to recommend that simply the practice for three years in that state shall entitle him to practice in any other state?

In the present shape of the resolution it had better not be passed at all unless we understand more fully what is meant by the "privileges of counsel." Without knowing more definitely, this Association had better not speak at all.

29. Charles Borcherling, of New Jersey, agreed with the last speaker; the resolution should be more specific. It would not be well to advise that a lawyer being admitted in one state should be able to go to another, and simply by virtue of his admission in the state he comes from, be admitted in the highest courts of the other state. In some states men were admitted as attorneys and counsellors at one and the same time, while in others some years had to intervene between the two. He would be unwilling to vote for it unless the resolution were made more specific and stringent.

30. Rufus King, of Ohio, said:

It still strikes me that this resolution depends upon the other—it is a question of practice. There had been objections raised because the resolution embodies what we understand to be a common practice throughout the country.

I do not know that a counsellor from one state was ever refused the privilege of counsel in another, although it has always, in such cases, been a matter in the discretion of the court. If that be so, it is a strong reason why the resolution should be adopted; it makes no difference which way we put it.

There seems to be a misunderstanding in regard to the matter, which I supposed Mr. Hunt had clearly explained by striking out the word "practitioner" and substituting the word "counsel." The resolution was not intended to advocate for admission and practice in any state, men who had not been properly admitted to the bar. It simply, therefore, proposes to embody, as a statute, or as a rule, that which we all understand to prevail throughout the country; if there should be any

doubt about the custom being general, I think the Association ought to recommend its adoption.

If it is broad enough to be extended to women, let it be so; if that should be the case, a woman would be the last person a chief justice would refuse.

31. Edward O. Hinkley, of Maryland, said:

I want to ask attention to one or two matters which seem to have escaped the attention of gentlemen here, perhaps not of the committee itself, and especially not of its chairman.

Having had occasion to go out of my native state of Maryland to practice law in four other states—Virginia, Pennsylvania, also in the city of New York and once in the city of Boston, I met, on every occasion, with the same answer to the motion made by the local counsel there, my colleagues—to have me admitted; it was simply—it is not necessary—the court will hear you as a matter of courtesy; that is one point. The courts of the several states do not admit generally members of the bar of other states. I speak now of the state courts; that is one point to be considered. Another matter to be considered, and one to which I especially call the attention of the Chairman of the Committee, is that there are decisions, though not very numerous, yet clear and distinct. I have read them in the American Reports, but have not their names at my tongue's end; doubtless some gentlemen may remember them; there are decisions that no state can admit a lawyer of another state to its bar, and the reason is that the lawyers in the several states are sworn to maintain the constitution and laws respectively of their several states.

Such a question arose between Indiana and Illinois, I think, where the right of admission was denied.* If that be so, if it is not a right, our passing a resolution will not set it straight, for we have to deal with so many states.

*See Matter of Mosness, 39 Wis. 509; 20 Am. R. 55; where the court refused to admit a member of the Illinois bar, in the face of a statute (Ch. 50, of 1855) authorizing it, which, if applicable, was held to be beyond the power of the legislature. E. O. H.

As to the practice in the United States Courts, it is different; being one country and one judicial system there is more uniformity, and a man admitted to the Circuit Court or District Court of the United States, in any of the Circuit or District Courts, will be admitted upon proper motion, being duly qualified, in any other Circuit. I think that appears without doubt, but he will not be admitted in the state courts by reason of his being a practitioner in any other state.

32. Thomas Hoyne, of Illinois, said:

I never heard the question raised in Illinois about the propriety of admitting any gentleman, conducting himself with proper attention, to practice as counsellor or attorney in Illinois, and I understand that is the practice in the Indiana courts. There has been a question connected with the legal education afforded at the schools in Michigan. I understand they admit very freely upon a very insufficient examination, and then allow members of the bar to practice in that state.

I will only suggest that I do not see the necessity at this time of raising a question upon the general practice which exists in the states at present.

33. A. Q. Keasbey, of New Jersey, said:

I do not comprehend the purport of the resolution, taking the definition given to it by Mr. King; it only means that we, by expression of our opinion, shall ratify what is the universal custom throughout the country, that every court, all over the land, shall hear as advocate any man who has been an advocate three years in the state where he lives. I have no objection to that; it is merely making a rule for what is already established by custom. But does not this resolution go further? What does it mean by the words "privileges of counsel?" I don't know the practice in other states, but in my state admission to the bar is first as attorney; you cannot in that capacity act as counsel of the Supreme Court; you cannot open your mouth, but must employ counsel, as in England an attorney

employs a barrister. After three years' practice the attorney has to pass another examination before he can become counsellor-at-law, and if admitted can then act as counsellor. If this resolution means that an attorney from another state can come to New Jersey and have the privileges of counsel, then I am opposed to it. There is too much ambiguity to the resolution, too much want of precision in the words which are substituted for the original resolution, against which I should have voted.

34. Clarkson N. Potter, of New York, said:

I agree with Mr. King's remarks. This matter is one of privilege. I think no man here ever went into another state and was refused permission to appear when professional duty required his appearance at such court. As has been stated, it is a discretionary power, but it seems to me it would be a very great mistake for the American Bar Association to recommend legislation where no evil exists, or to seek by legislation to take from the court a power which is very proper. I can hardly conceive the suggestion necessary, and think it more likely to be injurious than beneficial. I hope the resolution will not pass.

35. Mr. Hunt then replied to the objections made to the resolution:

The dangers apprehended by the first gentleman who spoke are purely imaginary, and in anticipation of such objections the resolution was amended by the committee, in view of that disclaimer. I do not know where the gentleman got his idea from. What do these gentlemen say? They say it is intended to make practitioners of law of persons not authorized. The committee declare they have no such purpose, and they struck out of the resolution any words which bore any such construction. One gentleman asked what was the use of declaring what already exists? The benefit of it is, that it will promote a spirit of harmony, of fraternal regard; that it will have a tendency to elevate the consideration in which the profession is held, to draw closer the ties of a true fraternal spirit. If

these are not good reasons why this resolution should be passed, if these are not reasons that appeal to an Association of the character of this in favor of a declaration in accordance with the custom of civilized states and existing comity, then I am at a loss to find a reason.

What dangers are to be apprehended from a measure of this kind? I fail to see any. On the other side the advantages and benefits are many. The physician who goes abroad is received into the bosom of the elevated and devoted profession of which he is a member without any other requirement than the honorable testimonials he has acquired of proficiency in the institution of learning from which he may have come. It is the same with other professions—the mining engineer, the civil engineer, the mineralogist—all are received upon the same footing by the comity of nations and by the practice of states. What danger is to come of them? What is the result? The petty institutions of imperfect education have given way before the university education, the true representative of enlightenment, civilization, and knowledge, whose insignia of knowledge are the proud and true titles of nobility wherever presented.

36. E. F. Bullard, of New York, made a motion to table the resolution, and it was seconded by Mr. Borcherling.

The motion was adopted and the first resolution laid on the table.

37. Mr. Hunt then moved the adoption of the second resolution as amended.

J. Hubley Ashton, of the District of Columbia, moved to lay the second resolution on the table.

Mr. Broadhead, of Missouri, offered a resolution to be an amendment for the second, and a substitute for the remainder of Mr. Hunt's resolutions, as follows:

Resolved, That the members of this Association, in each state, be requested to use their best endeavors to promote the passage of such laws and rules of Courts, as to the education and

admission of members of the bar, as shall better exclude incompetent applicants for admission to the bar.

2. *Resolved*, That this Association, in view of the different circumstances of the various states, cannot lay down any general rules for all, but they recommend at present, as ends to be gained:—

That the course of study be not less that three years;

That whenever practicable at least two years of that time be spent in some law school, where the different branches of law are thoroughly taught;

That in all events, they recommend the adoption of some further and more thorough system of written and oral examination of the candidates for admission to the bar, in addition to the present examination in open court.

Edward J. Phelps, of Vermont, said it would be a discourteous treatment of the resolutions of the committee of which Mr. Hunt was chairman, to lay the resolutions on the table. He would therefore suggest that they be made the subject of a special order for the next day.

38. The President suggested to the mover of the resolution to lay on the table, that if he would withdraw his motion, the resolutions might be brought up at the next day's session.

The motion to lay on the table was then withdrawn, and

Mr. Phelps moved to postpone the further consideration of Mr. Hunt's resolutions until 11 o'clock next morning—Friday, August 20th,

Which was adopted.

39. Mr. Butler, of New York, Chairman of the Committee on Jurisprudence and Law Reform, said:

MR. PRESIDENT:—I suppose it will be better, under the circumstances I am placed in, to make a verbal report, and to ask that the Committee have leave to consider the subjects committed to them. Among other subjects, we had instructions, by a resolution, introduced at the very eve of adjournment last

session, to prepare and submit to this meeting a synopsis of the laws of the states and territories relating to divorces. I have prepared a report, with the expectation of finding some members of the committee here present. One resides in New Orleans, and another in St. Louis, and another has gone to Europe. There is no provision in the by-laws for a single member of a committee, or for the Chairman, to act alone. I mention this fact because it might well be considered by the President of the Association, whosoever he may be next year, in reference to arrangements being made to prevent such embarrassments in future. Necessarily the Chairman of a Standing Committee is obliged to do his full share of the work, and sometimes the whole of it. In this case, acting under the resolution of the Association, a great deal of work has been done, which, so far as I am concerned, I am prepared to submit to the Association, and to ask their acquiescence in some of the conclusions to which I suppose my committee would arrive; that not being practicable, I will, with the permission of the President and the Association, simply report progress upon the subjects committed to us, and ask that any further report be deferred until the next annual meeting.

The Secretary called attention to the third article of the Constitution, which provides that "a majority of the members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting."

The President suggested that the by-law indicated the plural with respect to the committee first reporting; there was only one member of it present—the Chairman.

Mr. Butler said: I concluded there was not a majority present; I think the difficulty will be remedied in future, perhaps by the amended by-law introduced by Judge Poland.

On motion of Mr. Averil the request of the Chairman of the committee reporting was granted, and further report postponed until next year's session.

40. The Committee on Judicial Administration and Remedial Procedure then reported through its Chairman, Rufus King, of Ohio, who said:—

Last year, on account of the death of Mr. Somerby, the Committee had to apply for further time. Since that time we have corresponded with the Vice-President of each State for information, and have received replies from thirteen States, to the Vice-Presidents of which we are under obligation, but we have been unable to make the comparison complete. I would therefore ask that the Committee have until next year to file their report.

There being no objection, the request of Mr. King was granted.

41. The Committee on Legal Education and Admission to the Bar made no report, but merely alluded to the resolutions embraced in their report, pending the action of the Association the next day.

42. Committee on Commercial Law.

The only member of this Committee present was George E. Mercer, of Georgia. Mr. Mercer said:—

The Chairman of the Committee wrote to me to know if I had any report to make. I replied that I had not, and so far as I know, that Committee has no report to make.

43. Committee on International Law.

The only member of this Committee present, was John W. Stevenson, of Kentucky, who said he had never been notified of any meeting or action of that Committee, and as far as he was personally informed, the Committee had never met; there was, therefore, no report, and no action could be taken.

44. Francis Rawle, of Pennsylvania, on behalf of the Committee on Publication, said:

We have had printed of last year's proceedings, two thousand copies, at an expense of $550; we have also had extra copies printed of the papers read and addresses made for the gentlemen

who presented them. Of these reports of the Association, we have sent four or five to each officer, and one to each member, one to every state library, and one to each of the principal law libraries, and to the principal general libraries. The remainder, about one thousand, are now in the hands of the Secretary.

45. The Committee on Grievances had nothing to report.

46. William Allen Butler, of New York, then offered the following resolution :

Resolved, That in order to secure for the Association a central place for the transaction of business in charge of the Committees, and otherwise to facilitate the operations of the Association, the Executive Committee be authorized to procure a suitable room in the city of New York, or in the city of Philadelphia, for the use of the Association, as its central office, and to make such arrangements as may be necessary in their judgment for this purpose.

The meeting then adjourned until 8 o'clock P. M.

Thursday Evening.

The meeting was called to order at 8.10, by the President.

47. Mr. Poland, as Chairman of the General Council, presented the names of gentlemen nominated for officers for the ensuing year, all of whom were elected.

(See list of Officers at the end of the Minutes.)

48. The President then introduced George Tucker Bispham, of Philadelphia, who read a paper on "Rights of Material Men and Employés of Railroad Companies, as against Mortgagees."

49. After which Henry D. Hyde, of Boston, was introduced by the President, and read a paper on "Extradition between the States."

Mr. Poland then announced that in accordance with the new by law the Executive Committee had supplied its temporary vacancies, by the appointment of William Allen Butler, of New York, and Skipwith Wilmer, of Baltimore.

Edward J. Phelps, of Vermont, moved that "the thanks of this Association be presented to Mr. Cortlandt Parker, for the admirable address deliv ered before the meeting, likewise to Mr. Young, Mr. Bispham, and Mr. Hyde, for their very able and interesting papers, read before the Association."

Seconded by Mr. Lawton, of Georgia, and adopted.

Adjourned.

Friday Morning.

The meeting called to order at 11.10 A. M., by the President.

50. Mr. Poland, Chairman of the General Council, presented the names of the following gentlemen:

JOHN SPAULDING, Boston, Massachusetts,
FRANCIS E. DANA, Brooklyn, New York,
CHARLES A. DAVISON, New York,
CHARLES T. BRADY, New York,
HENRY M. HOYT, Wilkesbarre, Pennsylvania.
ANDREW T. McCLINTOCK, Wilkesbarre, Pennsylvania,
PERE L. WICKES, York, Pennsylvania,
IRVING BROWNE, Albany, New York,
THOMAS F. BAYARD, Wilmington, Delaware.
LUTHER R. SMITH, Mount Stirling, Alabama,
WILLIAM SCHLEY, New York.
DAVID BUELL, Greenville, Alabama,
SILAS U. PINNEY, Madison, Wisconsin,
WILLIAM F. VILAS, Madison, Wisconsin,
J. C. GREGORY, Madison, Wisconsin,
T. R. HUDD, Green Bay, Wisconsin,
JAMES E. JENKINS, Milwaukee, Wisconsin,
ALFRED L. CARY, Milwaukee, Wisconsin,
FRED. C. MINKLER, Milwaukee, Wisconsin,
DAVID G. HOOKER, Milwaukee, Wisconsin,
EPHRAIM MARINER, Milwaukee, Wisconsin,
GEORGE H. WATROUS, New Haven, Connecticut,
LEVERETT M. HUBBARD, New Haven, Connecticut,

all of whom were elected members of the Association.

51. The chair then announced that the business in order was the consideration of the resolutions offered by the Committee on Legal Education and Admission to the Bar.

52. Before proceeding therewith, Mr. Bullard offered, by consent, the two following resolutions, which were adopted:

Resolved, 1. That the Committee on Judicial Administration be requested to ascertain, and report at the next session, how far Congress can vest in the state courts the power to execute a national bankrupt law.

Resolved, 2. That the Committee on Jurisprudence be requested to ascertain, and report at the next session, how far executive officers of the general government can reverse the action of their predecessors in cancelling land patents which have already been issued.

53. Upon the special order of the morning session, Mr. Broadhead asked the Secretary to read his substitute for Mr. Hunt's resolutions, which was done.

Mr. King asked if the amendment, as substituted, was now before the house.

The President answered: The question before the meeting is the adoption of Mr. Broadhead's substitute for the entire resolutions.

Mr. King asked to have the substitute read again, which was done.

54. Jacob Weart, of New Jersey, said: It appears to me, after this long discussion, and after the careful consideration we have given this matter, that the resolutions offered by the gentleman from Missouri are broad enough in their scope to cover the entire ground, and I think go as far as we can in an association like this. I listened to their reading with a good deal of attention, and am persuaded they convey all that this association can properly commit itself to.

I, therefore, move that the resolutions offered by the gentleman from Missouri be adopted without alteration.

55. P. Bliss, of Missouri: I desire to say a few words upon this matter. At the first session of this association a resolution was passed giving certain instructions to the Committee on Legal Education and Admission to the Bar. Acting under those suggestions that committee prepared a report which, if read, cannot but be admired for its ability, its care, and research. The committee also reported a series of resolutions, which are presented to the association.

Now the will of this association through a resolution, or the report of this committee to the respective law schools in the United States, would be of greater force than the action of any individual members in any respective state. If we contemplate the resolution, and the purpose of this organization, there is no other organization in the country that can have a better effect in shaping the laws of this country than the American Bar Association. I am in favor of the original resolution. I think it is best calculated to bring about a harmonious action of the law schools. As I understand the resolution, or substitution offered by my colleague from Missouri, a diploma would be necessary in every state from a law school to secure admission to the bar. Now there are many excellent men who are not able to obtain a law school education. Accepting the substitute as it now reads, I think the resolution reported by the committee covers the entire ground contemplated by the substitute. I think after the committee have labored for two years, and reported their work, it would be safer and wiser to adopt the resolutions of the committee than the substitute offered by my learned friend from Missouri.

There are three words in the second resolution, "well paid and," I think they should be struck out.

Mr. Hunt said:—That amendment will be cordially accepted by the committee.

Mr. Phelps, of Vermont, said:—

I concur with much that has been said by the gentleman from Missouri (Mr. Bliss). It does seem to have been overlooked,

that the Committee, whose labors are now under consideration, were instructed at the first meeting of this association to report certain resolutions. Ordinary courtesy to the committee should induce us to pause before we summarily dispose of the result of their labors.

In the first place, all we can do is to recommend—we have no power over this subject to deal with it; the point is, to what extent shall we put ourselves on the record as recommending what we deem to be desirable to be accomplished. The central idea of the committee is one thing; the precise form in which that idea shall find expression, and the precise manner in which it shall be carried out, is a different one, and one that is very important. I, for one, will cheerfully accede in that respect to the views of others, although I should be satisfied with the resolutions offered by the committee.

I do think we ought to put ourselves on the record now, decidedly and unmistakably, in favor of elevating the standard of legal education, of ultimately bringing about the result that a regular education at a proper school of law shall be one of the requisites for admission to the bar in all the states.

We all know how large a proportion of the great lawyers and judges of this country never saw a law school. This country has seen men enough, who, by the light of a pine knot over some tattered copy of an old edition of Blackstone, would find their way into the profession of the law, and into its very highest honors. If all the young men coming to the bar were of that stamp, it would be unnecessary to have any requisite for admission. But I would respectfully ask any gentlemen here, if he were going back to the days of his youth and were to study his profession over again, whether he would not avail himself of the advantages offered by our present law schools. It cannot be denied, that at the present day a higher education is imperatively demanded than was requisite in former years.

Then, again, we must do something to exterminate the "rats." The profession should not be converted into an almshouse for men who expect to live without labor, or into the

means of furnishing respectability to men who are not entitled to be respectable. It should be understood that the entrance into the profession shall be through the gate of knowledge and high qualifications, and in no other way.

I regard with great respect the substitute offered by the learned gentleman from Missouri. There is no man here whose words I listen to with more attention and respect than his. As I said, I do not contend for any particular form of words, but I do desire there should be no ambiguity; it should be decided and plain. We should put ourselves on the record in favor of an elevated standard, the most elevated standard it is reasonable to require of legal education, looking to the time when a regular course of legal education at an institution will be both practicable and a requisite, as it is with regard to the medical profession. We may not live to see the day, but I hope we shall live to see it begun.

It seems to me the views of some members may be met by omitting the second resolution, which contains the curriculum of studies, leaving that subject to be adjusted by the institutions themselves. Another objection might be overcome by confining the resolution to states where such institutions are at present existing, which I think was the intention of Mr. Hoyne's proposed amendment. I do not make this in the form of a motion—simply throw it out as a suggestion. This might be met by the insertion of the words, "where such schools are necessary," or, "where they do not already exist," or something to that effect, so as to preclude the idea that we desire rival schools to be established where they already exist.

56. James M. Dudley, of New York, said:

One of the reasons why I should support the original resolution is the very creditable clause in the second resolution. In some law schools, of one of which I happen to have some knowledge, diplomas are obtained and admissions which are undoubtedly a fraud upon the profession. I know of the case of two young men who with nothing more than the education

of a common school, attended a certain law school, whose diploma, under the law of the state it was situated in, was sufficient to admit its holder to practice in the courts of that state. Such diplomas were granted in these cases I mention, after the young men had attended the law school two weeks, and by virtue of this diploma they were admitted to the bar of that state.

Mr. Atkinson, of Michigan.—In what state was that school?

Mr. Dudley:

I prefer not to say, but I can satisfy anybody that I am correct in my statement that both young men were admitted after two weeks study. I hope the law has been changed—and I think it has during the past winter—so that this fraud upon the profession cannot be longer practiced. In my judgment it is essential that this Association should recommend some curriculum, or some course of study, and a certain length of time in study, as a condition precedent to the granting of a diploma, which should only be given after a full and searching examination by some board appointed for the purpose. It seems to me such suggestions should be included in the resolutions.

57. Mr. King, of Ohio, said:

It seems to me the matter stands thus—the resolutions of the committee take a position squarely which has received the approval of the Association; the substitute proposes to "draw it mild," and is really not much of a recommendation.

I agree with the gentlemen from Vermont and Missouri (Mr. Phelps and Mr. Bliss), that the proper plan of the Association is to stand by its record. We have instructed our committee to take a position; the committee have done so, and I do not think we should now back down. While changes in the phraseology may be advisable, yet I for one am heartily in favor of and sympathy with the object and spirit of the resolutions reported by the committee. There are considerations in favor of the suggestion of the last gentleman who spoke—

a recommendation by this Association of this curriculum of studies. Our main object is to secure a proper education for the legal profession, and it is a worthy object. The history of our country proves that in the absence of any other institution, the education of the bar is, after all, the only course we have for the education of the legislator, that being the source from which we mostly draw, and therefore we should take a strong ground in regard to the education of the members of our profession.

While I do not think it would be well to insert the whole of this curriculum, it would be eminently proper for the Association to recommend to the law schools of the country the adoption of a certain course of study. If I were going to make a change, I would strike out Political Economy and insert the Laws of Procedure. It may be that it is regarded as technical, and that the gentleman who is the author of the course proposed regards that as a matter of course, and therefore did not insert it; but I think it would be better to omit Political Economy. Of course, by the Law of Procedure, I mean Pleadings, Practice, and Evidence.

I trust the Association will stand by the committee, and while I regard Mr. Broadhead's substitute as all right, it lacks the force and point which this Association should give to the matter.

In respect to this matter of the Albany Law School, I want to state something else about that. A young man came to Mr. Dwight and stated he had read law two years with Mr. ——, a very distinguished advocate of the New York bar. Upon an examination, Mr. Dwight asked the young man what process of instruction he had gone through, for the young man seemed deficient. Said Mr. Dwight: "I thought you had studied with Mr. —— two years?" Said this young man: "Mr. Dwight, to tell you the truth, I had not the honor of his personal acquaintance; his place of business was in the front office, and mine in the back, and that is the way I passed my two years."

Mr. Dudley said:

I want to assure Mr. King I did not refer to the Albany Law School. That is a very different institution from the one I had reference to.

58. H. H. Wells, of Washington, D. C., said: "I am not content with the argument advanced in support of the report. I am ready to concede the industry and learning and ability of the report, but it will never answer for this association to establish as a rule for its conduct in this or subsequent cases, that because by a resolution they have directed a competent and able committee to report on a subject that therefore they are bound to adopt that report, otherwise you are at once precluded from the investigation of any subject or any line of procedure that you would not wish finally to be bound to adopt.

We all appreciate the necessity of a high standard of education. We understand, or at least believe, that the safety of our government or form of law and constitution depends in a large measure upon the fidelity of the legal profession, and that its success depends upon its learning. We do not agree as to the method by which we shall arrive at this higher elevation; as has been suggested by nearly every speaker, we are powerless except to recommend; we may have an opinion as to what studies should be pursued in a law school, and what number of professors should teach those subjects.

I am in favor of Mr. Broadhead's substitute, because it simply recommends an elevation of the standard of excellence, and proposes a simple method best calculated to secure this object. Can we go further? Would it be well for us to put ourselves on the record further?

If you cannot suggest a system that is acceptable to the gentlemen here, how do you expect to fare with the subject with the legislatures and before the courts? I hope the substitute will be adopted. I do not think any discourtesy will be shown to the committee if we should fail to adopt the resolutions they offer.

59. Malcolm Hay, of Pennsylvania, inquired if Mr. Broadhead's resolution contemplated the examination of students by the courts. In many states there is no such oral examination by the court.

Mr. Broadhead: No, sir; I do not require that, only in those states where such oral examination by the courts is customary.

60. Mr. Hunt: There is one of the resolutions offered by the committee of which I have the honor to be chairman before the association; that resolution, as it is now amended, reads as follows:

Mr. Hunt then read his second resolution (*vide supra.*)

Now, Mr. President, that was the resolution before the house, and then comes a substitution offered by the gentleman from Missouri (Mr. Broadhead), which proposes to deal with this whole matter in a summary mode, to strike out the whole thing and substitute something else.

One gentleman from Missouri (Mr. Bliss), spoke in a spirit with which I agreed better than the spirit reflected by the substitute, and suggested that the committee had been charged to make this report. More than that, the very preamble of the Association enjoins upon the Association as a matter connected with its very life and being, and true enlightened existence, action similar to that which has been suggested. Under these circumstances the committee is denied a consideration upon the substance of a simple resolution taken disconnectedly from the whole, and in reference to which the committee announced before-hand it would be most happy itself to propose amendments, and further, to receive them from the superior wisdom of the gentlemen present. One of the last members who spoke thought the committee had gone too far in their resolution. With all respect to that gentleman, though we would have been proud of his support, we cannot help it if he disagrees with d'Aguesseau and Austin, and with Story and Webster, and with the governments of France and of Great Britain, and with

the other great authorities used by the committee, and whose conclusions are formulated in the shape of resolutions. Notwithstanding its respect for the last gentleman who spoke, the committee will welcome the issue in which he will array himself against the authorities of whom I have spoken.

We did expect a hearing would be accorded us, and that the resolutions would be met upon their merits; as it is, no man seems willing to yield anything to anybody else, and it may end in the Association adjourning with the declaration that it was able to declare nothing at all upon a matter of such vital import as the public education for the bar.

We will make our resolution simple and comprehensive. We will cordially welcome a simplification of its phraseology. We do not contend for words, the expressions do not belong to us. They are drawn from the vocabulary of science, and breathe the spirit of educational progress which is the very soul and life of all progress, of all virtue, of all republicanism, and the foundation-stone upon which the profession itself rests. If you adopt this substitute without allowing a consideration upon that which I have endeavored to explain, and for which we welcome discussion, if you adopt that, you gag the Association, you spike our noble battery, which should thunder in defence of virtue, of truth, and education, and you stamp yourselves in the beginning as unable or unwilling to deal with the subject. I invoke a spirit of progress and of liberty. I undertake to say for the committee, they will go at least as far as any gentleman present here to reach the much desired result. I hope the substitute will be laid on the table or rejected.

61. After some further remarks by Mr. Broadhead in reference to the spirit of his substitute, the question on its adoption was then put to the meeting. The Chair being unable to decide the result of the *viva voce* vote, a rising vote was called for, and the substitution was rejected by a vote of 32 to 26.

62. Mr. Poland, Chairman of the Executive Committee, then reported to the meeting that two gentlemen of the Havana bar,

viz., Josè A. Cortina and Josè Hernandez Abren, were present, and he moved they be admitted to the privileges of the floor of this meeting, in accordance with By-Law XII. Adopted.

63. Mr. Hunt then moved the adoption of the second resolution offered by the Committee on Legal Education and Admission to the Bar.

Mr. Hoadly, of Ohio, inquired what the words "proper authority" meant.

Mr. Hunt said:

One gentleman spoke of the establishment of private schools where diplomas were conferred without authority, and undeservedly. I think the terms "proper authority" are comprehensive.

64. Mr. Keasbey, of New Jersey:

I do not comprehend what is intended by the words "shall be a qualification?". That is ambiguous. Does it mean that it shall qualify, or be a full qualification, sufficient for admitting? If so, it goes further than the former resolution.

Mr. Hunt:

It is intended to mean "*a* qualification," to say that a man shall be such and such a thing, and that shall be a qualification for a post, would seem to be comprehensive; but we will accept the suggestion of the gentleman, and insert the words, "one of the qualifications."

(The resolution was then read as further amended.)

65. Mr. Hoadly:

While I shall vote for the resolution, I desire to criticise it somewhat. I do not understand what is meant by "proper authority." With regard to what the gentleman said about private schools of law, I have heard of such institutions, but I know so little about them that I am a candidate for information. I know there are collegiate institutions connected with several universities regularly established by law, and incorpo-

rated, for the purpose of teaching law. I don't know what other "proper authority" there can be. Such institutions would seem to be proper enough. It seems to me that the Litchfield Law School, though private, was established by proper authority.

Now, about the number of teachers, I think four are too many. When I began to study my profession, there were one hundred and seventy students instructed by two professors, and I venture to say that the men who studied under Simon Greenleaf and Joseph Story wanted no other professors.

I have for many years been teacher in a law school. Now, we have six or eight professors; but for a long time we had but three, and a great part of the time the number of students was so small that three professors could adequately instruct them in all the departments named in this curriculum, except the first and thirteenth. Besides, it is difficult to procure good teachers. You cannot induce competent men to leave the practice of their professional duty and engage in teaching. In our law school our great desire has been to get such men. It is because professional life is so much more attractive, and holds out greater rewards. It is also because teaching is in large part drudgery, and unacceptable to nine men out of ten, I might say to ninety-nine out of every hundred.

The President:

Does the committee accept this suggestion of the gentleman from Ohio?

Mr. Hunt:

I do not know what his suggestion is.

Mr. Hoadly:

My suggestion is to strike out the word "four," and the words "by proper authority." But I make no motion.

Mr. Hunt: Then I do not understand there is anything before the house if the gentleman makes no motion.

66. Cortlandt Parker, of New Jersey:

It seems to me if this association pass a resolution asking too much or requiring too much, our recommendations will fall without respect or acquiescence. I respectfully submit that the best course to be taken is to amend those resolutions more largely than has yet been suggested. It seems to me it would be a judicious course to drop the second resolution as it now stands, and also the third, imposing the curriculum. I confess I am not ready myself to say which shall be the proper curriculum of study in a law institution. I don't think that an association will commend itself to the respect of the world who shall settle definitively upon a curriculum.

I would, therefore, suggest that that resolution be dropped from the list.

Mr. Hunt: That resolution is not before the house; it is the second.

Mr. Parker: That may be true; but it seems to me that if the second passes, the third is utterly unnecessary; it seems pretty much the same as the second, with, perhaps, a little more definiteness.

I propose that this resolution be amended by striking out the words "by proper authority," and in the second place, by striking out all after the words "schools of law;" that will leave the resolution in a position in which we can all vote for it. It will then read "that the several states and their Local Bar Associations be respectfully requested to recommend and further the maintenance of schools of law."

With reference to the number of teachers, that is a matter we should offer no suggestions about. My impression is that the great law school in New York has been mostly conducted by one man—I mean the distinguished Professor Dwight. I think no addition has been made until the recent addition of Judge Dillon. I believe that in the New York University the faculty is not as numerous now as heretofore, while the number of students in both academies is exceedingly large.

I do not think we need to use the qualification "efficient" teachers. Of course, we mean that they should be efficient teachers; but it seems to me if the gentleman will allow me to suggest it, it hardly seems respectable. Now, as to the diploma, why should that be absolutely a qualification for admission to the bar for a man who has passed a written examination? I do not think it necessary at all; and what shall we be taken to mean by the suggestion "a full and fair investigation?" We are all prepared to secure what is substantially the object of this committee, and bring about the result suggested in their report.

I think, if the resolution as I read it, is adopted by this association—if we stop there—it will be understood and respected. If we go further, it does seem to me we shall lose some part of the good will of the legal community; I, therefore, move to amend the resolution in the manner I have suggested; and in addition to that I will include a motion to lay the other resolutions of the committee on the table.

67. Mr. Hinkley, of Maryland:

I second the motion, because having sworn to support the Constitution of the State of Maryland, I feel bound to keep my oath. We believe, and have declared, Mr. President, in the Declaration of Rights prefixed to our Constitution, "that monopolies are odious, and ought not to be tolerated." The University of the State of Maryland, having a law school of three professors, has taught many students of law in Baltimore, and nine out of ten of those who have been admitted to the bar in Baltimore, thought it proper to go through that school. So it is clear that the proper legal education at a law school is a good thing. We have found it so, and I presume the sentiment of the bar must be so. That University of Maryland is a private corporation, or a monopoly. Its professors perpetuate their own body as a corporation. A law did exist in Maryland, allowing the diploma of that institution to be a sufficient qualification for admission to the bar without examination by

the judges. But that was in direct conflict with first principles, and the section was repealed; so that the diploma of the University is no longer a passport into the courts of justice against the will of the judges. At the present time candidates for admission are examined in open court, but they find it to their own advantage to receive the diploma of the University. For this reason I agree perfectly with the last speaker, and I was waiting with interest to hear some such sentiment uttered. I can never agree that the diploma of any institution or corporation shall be sufficient to admit, or that it shall be an essential qualification.

There are men in this country who may not be able to pay for a law school education, who yet may be ornaments to their profession in the future. For this reason I think no resolution ought to be adopted by this body looking to a diploma as an essential qualification.

68. Mr. Bennett said he was in favor of the original resolution, and therefore would call the previous question.

69. Mr. Borcherling, of New Jersey:

I do not think it would be wise to recommend by these resolutions that the legislators of the various states should be asked to take any action to maintain a law school in their respective states. I would like to know in what state a legislature would consent to expend public funds for the education of lawyers. It would be extremely unpopular. If such a step were taken, it would result in defeating the very object we seek to attain.

70. The President: The question is now upon the adoption of Mr. Parker's amendment to the resolution. Unless there is objection, Mr. Hunt will be entitled to conclude the debate, by the custom adopted yesterday.

71. Mr. Hunt: The last speaker said it would be dangerous to recommend it to the legislatures.

Well, the resolution speaks for itself in that respect, and shows the fallacy of the gentleman's fears.

The gentleman from New Jersey has moved to strike out everything that I think a majority of the house wish to keep in. He wishes to strike out the law school part of the resolution, and that is what we want in. The advantages to be derived from a law school are so obvious I need not reiterate them. The gentleman from Vermont expressed what I regard as the correct view in that respect. It is the only method calculated to extend legal education, and insure the beneficial results we seek.

One gentleman who spoke seemed to think we designed to give the schools everything. That is not the case. Suppose any court should wish to know more about the candidate, or have reason to think there had been some mistake in relation to the fact or law; suppose it should desire to extend its arm for the protection of honor or the learning of the profession; suppose it should wish to inquire into the moral character of the applicant? In all such cases the power of the court is reserved, and can always be exercised. It seems to me the judges everywhere would welcome the aid that is recommended in the resolutions as co-operative in the task imposed upon them. Another gentleman thinks we ought not to include a suggestion that there be four professors. If we go on at this rate we shall illustrate the fable of "the man and his son and the ass."

With regard to the matter of the number of the professors, it seemed essential that some number should be fixed upon, but the gentleman must recollect that these resolutions are wholly persuasive; they do not lay down as a rule that the professors in a law school should consist of four. We do not recommend any special recognition in favor of four, but undertook to say that at least four would be beneficial for purposes of public instruction in such schools. The school of which the distinguished gentleman, Mr. Bennett, my colleague on the committee, is a member, has, I believe, twelve.

The science of legal education is in the morning of its history; all it says is, give us a school large enough for the furtherance

and advancement of the science. All that has been said about the number of professors may be true, but is it to be supposed, is it to be tolerated, that any gentleman in this country should hold a law school for himself? Is it to be supposed that hereafter, when all our modern experience and science shows a large corps of instructors to be necessary, that we are to be referred to primitive times, and the necessities of those times, for a model to guide us in the future? Our recommendation is only a persuasion; it makes such an education as is foreshadowed one of the qualifications. Mr. President, I ask for a vote.

78. The President:

The question is on the adoption of the amendment offered by Mr. Parker. The Secretary will read the amendment.

(The amendment being read, Mr. Hunt asked if it would be in order to make a motion to table the amendment).

The President:

Yes; but it will carry the resolution with it.

A vote was then taken on the adoption of Mr. Parker's amendment, the result being, ayes, 26; nays, 24.

The resolution was then adopted as amended.

79. Mr Cortlandt Parker then moved to lay the remaining resolution on the table.

Mr. Mercer, of Georgia, suggested the propriety of having a resolution embracing a specific time to be pursued in study by law students. He thought the resolutions should not be tabled until some such suggestion was offered.

The President: The Chair would remind the Association that the motion to table is not debatable.

80. Mr. Ashton, of the District of Columbia:

Whether the general standard for admission to the bar in the states of this Union ought to be improved or elevated, is, I suppose, the main object of the Association in considering the very interesting and able report prepared by the learned gen-

tleman from Louisiana. It seems to me the first thing to be ascertained in this direction is, what are the facts in regard to the qualifications existing by law in the several states of the Union, or in all respective bars. I presume no gentleman present in this Association is personally familiar with the law or custom of every state in this particular. I think the Association ought to be acquainted with those facts, and be informed what are the qualifications required in each and every state for admission to their respective bars. If these facts are ascertained and brought before the Association, it can then be determined whether those qualifications are such as ought to be required for admission to the bar. I therefore offer the following resolution:

Resolved (1), That the Vice President and Local Council for each State be requested to report to the Committee on Legal Education, the facts in regard to the qualifications existing by law, for admission to the bar in such State, the means therein provided by public authority, or otherwise, for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualification for admission to the bar, in such State, and the best means of accomplishing that object.

Resolved (2), That the said Committee be directed to report such facts and suggestions, as may be furnished by the several Vice Presidents and Local Councils, pursuant to the first resolution, to the Association for its further consideration and action.

81. The President: Does the gentleman from New Jersey insist upon his motion to lay on the table?

Mr. Parker: I do insist upon my motion.

The President: Then further debate is out of order, and the question is upon that motion.

A division was called for—

Resulting—Ayes, 29; Nays, 24.

The motion was therefore adopted, and the resolutions tabled.

Mr. Mercer, of Georgia, then offered a resolution, which the chair decided to be the same, substantially, as the resolution which had been tabled.

82. Mr. Ashton's resolution was then called up.

Mr. Clifford, of Massachusetts, moved to amend by adding the words, "with such suggestions as the Committee chose to present."

The mover of the resolution accepted this amendment; the question of the adoption of the resolution as amended was then put, and the resolution was adopted.

83. On motion of W. H. H. Russell, of Missouri, the following was adopted:

Resolved, That the Committees which have not as yet reported be, and hereby are, requested to report in writing at the next meeting of the Association.

84. E. J. Phelps, of Vermont, then offered an amendment to the Constitution, which was adopted, as follows:

A Committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the Committee, be proper.

It shall be the duty of the Vice-president from each state and territory to report the deaths of members within the same to the said Committee.

85. Mr. Poland: The Executive Committee had intended to invite discussion upon the papers presented and read to the Association, but it was found impracticable, by reason of the extended time occupied in the discussion of the report of the Committee on Legal Education. It is to be hoped that at our next meeting arrangements will be made for a discussion on such papers as may be read.

If there be no further business I would move that this Association meet at 8 o'clock this evening, in the reception rooms of the Association, at the Grand Union Hotel.

The Association then adjourned until the next annual meeting, on Wednesday, 17th August, 1881, at Saratoga Springs.

EDWARD OTIS HINKLEY,
Secretary.

MEMORANDUM.

The Association gave a dinner to its members at the Grand Union Hotel on the evening of August 20th. Seventy-seven members were present. Alexander R. Lawton, of Savannah, Ga., presided. The following toasts were offered by the Presiding Officer, and responded to by members:

THE RETIRING PRESIDENT, - B. H. BRISTOW, New York, N. Y.
THE NEW PRESIDENT, - - EDWARD J. PHELPS, Burlington, Vt.
THE AMERICAN BAR ASSOCIATION,
CARLETON HUNT, New Orleans, La.
THE EXECUTIVE COMMITTEE, LUKE P. POLAND, St. Johnsbury, Vt.
THE SECRETARY, - - EDWARD O. HINKLEY, Baltimore, Md.
THE TREASURER, - - - FRANCIS RAWLE, Philadelphia, Pa.
THE BENCH, - - - GEORGE MARSTON, New Bedford, Mass.
OUR PROFESSION—BETTER THAN OUR PRACTICE,
GEORGE HOADLY, Cincinnati, Ohio.
THE LAWYER IN POLITICS, - - EMORY A. STORRS, Chicago, Ill.
OUR CLIENTS, - - THOMAS N. MCCARTER, Newark, N. J.
THE LAWYER IN DIPLOMACY, JOHN E. WARD, New York, N. Y.
THE ELEPHANT AFTER GESTATION,
ANTHONY Q. KEASBEY, Newark, N. J.
THE LEGAL PROFESSION, WILLIAM PRESTON, Lexington, Ky.
THE JUNIOR BAR, - - - GEORGE A. MERCER, Savannah, Ga.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as "The American Bar Association." Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each annual meeting for the year ensuing:—A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state; the Council shall be a Standing Committee on nominations for office; an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be chairman of the Committee.

The following Committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each :

On Jurisprudence and Law Reform ;
On Judicial Administration and Remedial Procedure ;
On Legal Education and Admissions to the Bar ;
On Commercial Law ;
On International Law ;
On Publications ;
On Grievances.

A majority of those members of any Committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such Committee for the purposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be *ex officio* chairman of such Council.

A Committee of three, of whom the Secretary shall always be one, shall be appointed by the President, at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them, as shall in the discretion of the Committee be proper.

It shall be the duty of the Vice-President from each state and territory, to report the deaths of members within the same to the said Committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the bar of which the persons nominated belong. Such nominations must be transmitted, in writing, to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state.

All nominations thus made, or approved, shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them, upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association, upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any annual meeting of the Association, by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states, and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*state*," wherever used in this Constitution, shall be deemed to be equivalent to *state*, *territory* and the *District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:

(*a*) Opening address of the President.
(*b*) Nominations and Election of Members.
(*c*) Election of the General Council.
(*d*) Reports of Secretary and Treasurer.
(*e*) Report of Executive Committee.
(*f*) Reports of Standing Committees,
On Jurisprudence and Law Reform;
On Judicial Administration and Remedial Procedure;
On Legal Education and Admissions to the Bar;
On Commercial Law;
On International Law;
On Publications;
On Grievances.
(*g*) Reports of Special Committees.
(*h*) The Nomination of Officers.
(*i*) Miscellaneous Business.
(*j*) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each state Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association; in states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, Members of the Bar of any foreign country, or of any state, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The annual Address of the President, the Reports of Committees and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of Reports, Addresses, and Papers read before the Association, may be printed by the Committee on Publications, for the use of their authors, not exceeding two hundred copies to each of such authors.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all Officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all Committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary; and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all Standing Committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If, at any Annual Meeting of the Association, any member of any Committee shall be absent, the vacancy may be filled by the members of the Committee present.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

ANNUAL DUES.

XIII.—The annual dues shall be payable at the Annual Meeting, in advance; if any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law within sixty days after each meeting, to all members in default.

PRESIDENT,

EDWARD J. PHELPS,

Burlington, Vermont.

SECRETARY,

EDWARD OTIS HINKLEY,

No. 43 North Charles Street, Baltimore, Maryland.

TREASURER,

FRANCIS RAWLE,

No. 402 Walnut Street, Philadelphia, Pennsylvania.

EXECUTIVE COMMITTEE,

LUKE P. POLAND, *St. Johnsbury, Vermont,* CHAIRMAN,

SIMEON E. BALDWIN, *New Haven, Connecticut,*

WM. ALLEN BUTLER, *New York, New York.*

COUNCIL.

Alabama,	DAVID CLOPTON.
Arkansas,	J. M. MOORE.
Connecticut,	ROGER AVERILL.
District of Columbia,	J. HUBLEY ASHTON.
Georgia,	GEORGE A. MERCER.
Illinois,	THOMAS HOYNE.
Indiana,	R. S. ROBERTSON.
Kentucky,	JOHN W. STEVENSON.
Louisiana,	CARLETON HUNT.
Maine,	ALMON A. STROUT.
Maryland,	SKIPWITH WILMER.
Massachusetts,	EDMUND H. BENNETT.
Michigan,	O'BRIEN J. ATKINSON.
Mississippi,	JOSEPH E. LEIGH.
Missouri,	JAMES O. BROADHEAD.
Nebraska,	CHARLES F. MANDERSON.
New Hampshire,	ALBERT S. WAIT.
New Jersey,	JACOB WEART.
New York,	E. F. BULLARD.
Ohio,	GEORGE HOADLY.
Pennsylvania,	THOMAS E. FRANKLIN.
South Carolina,	A. G. MCGRATH.
Vermont,	LUKE P. POLAND.
Virginia,	ROBERT OULD.
West Virginia,	JOHN A. HUTCHINSON.
Wisconsin,	JOHN W. CARY.

VICE-PRESIDENTS

AND

MEMBERS OF LOCAL COUNCILS.

ALABAMA.—Vice-President, THOMAS H. WATTS.
Local Council, D. S. TROY, WALTER S. BRAGG.

ARKANSAS.—Vice-President, J. C. TAPPAN.
Local Council, U. M. ROSE, P. O. THWEATT.

CALIFORNIA.—Vice-President, JOHN N. POMEROY.

CONNECTICUT.—Vice-President, ORIGEN S. SEYMOUR.

DELAWARE.—Vice-President, ANTHONY HIGGINS.

DISTRICT OF COLUMBIA.—Vice President, H. H. WELLS.
Local Council, R. T. MERRICK, NATHANIEL WILSON.

GEORGIA.—Vice President, ALEXANDER R. LAWTON.
Local Council, N. J. HAMMOND, L. N. WHITTLE.

ILLINOIS.—Vice-President, DAVID DAVIS.
Local Council, BENJAMIN F. AYER, LYMAN TRUMBULL, G. KOERNER.

INDIANA.—Vice-President, BENJAMIN HARRISON.
Local Council.—ABRAM W. HENDRICKS, ASA IGLEHART, ROBERT S. TAYLOR.

IOWA.—Vice-President, W. G. HAMMOND.
Local Council, GEO. G. WRIGHT, OLIVER P. SHIRAS.

KENTUCKY.—Vice President, WILLIAM PRESTON.

Local Council, JAMES S. PIRTLE, WM. C. P. BRECKENRIDGE, JOHN MASON BROWN.

LOUISIANA.—Vice-President, F. P. POCHÉ.

Local Council.—THOS. J. SEMMES, THOS. L. BAYNE.

MAINE.—Vice-President, NATHAN WEBB.

Local Council, WILLIAM L. PUTNAM, F. A. WILSON.

MARYLAND.—Vice President, R. J. GITTINGS.

Local Council, A. LEO KNOTT, W. J. ROSS, HENRY STOCKBRIDGE, JULIAN J. ALEXANDER.

MASSACHUSETTS.—Vice-President, HENRY D. HYDE.

Local Council, LEONARD A. JONES, FRANK GOODWIN, CHARLES W. CLIFFORD.

MICHIGAN.—Vice-President, THOMAS M. COOLEY.

MISSISSIPPI.—Vice-President, LOCK E. HOUSTON.

Local Council, R. O. REYNOLDS, GEORGE A. EVANS.

MISSOURI.—Vice-President, HENRY HITCHCOCK.

Local Council, PHILEMON BLISS, GEORGE W. BAILEY, EDWARD C. KEHR.

NEBRASKA.—Vice-President, JAMES M. WOOLWORTH.

Local Council, S. H. CALHOUN, CHAS. F. MANDERSON.

NEW HAMPSHIRE.—Vice-President, JOHN M. SHIRLEY.

Local Council.—CLINTON W. STANLEY, OSSIAN RAY, ALONZO P. CARPENTER.

NEW JERSEY.—Vice-President, ANTHONY Q. KEASBEY.

Local Council, GARRETT D. W. VROOM, CHARLES BORCHERLING, R. WAYNE PARKER.

NEW YORK.—Vice-President, CLARKSON N. POTTER.

Local Council, N. C. MOAK, JAMES M. DUDLEY, W. B. FRENCH.

OHIO.—Vice-President, RUFUS KING.

Local Council, WILLIAM T. McCLINTOCK, STANLEY MATTHEWS, E. A. FERGUSON, ISAAC M. JORDAN, RUFUS P. RANNEY, GEORGE W. HOUK.

PENNSYLVANIA.—Vice-President, GEORGE W. BIDDLE.

Local Council, A. A. OUTERBRIDGE, HENRY GREEN, GEORGE SHIRAS, JR., HUGH M. NORTH.

RHODE ISLAND.—Vice-President, CHARLES S. BRADLEY.

Local Council, BENJAMIN F. THURSTON, WILLIAM P. SHEFFIELD.

SOUTH CAROLINA.—Vice-President, HENRY E. YOUNG.

Local Council, WILLIAM H. BRAWLEY, CHARLES D. SIMONTON, ROBERT W. BOYD.

TENNESSEE.—Vice President, WILLIAM F. COOPER.

Local Council, ALBERT T. McNEAL, B. M. ESTES.

VERMONT.—Vice President, DANIEL ROBERTS.

Local Council, NORMAN PAUL, ALDACE F. WALKER.

VIRGINIA.—Vice-President, J. RANDOLPH TUCKER.

Local Council, WM. J. ROBERTSON, LEGH R. PAGE.

WEST VIRGINIA.—Vice-President, EDWARD B. KNIGHT.

Local Council.—JOHN A. HUTCHINSON.

WISCONSIN.—Vice-President, SILAS U. PINNEY.

Local Council, WILLIAM F. VILAS, ALFRED L. CARY, EPHRAIM MARINER.

COMMITTEES.

ON JURISPRUDENCE AND LAW REFORM.

WILLIAM ALLEN BUTLER, New York, N. Y.
SIMEON E. BALDWIN, New Haven, Conn.
EDWARD L. PIERCE, Boston, Mass.
HENRY HITCHCOCK, St. Louis, Mo.
GEORGE TUCKER BISPHAM, Philadelphia, Pa.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

RUFUS KING, Cincinnati, Ohio.
GEORGE W. BIDDLE, Philadelphia, Pa.
E. C. SPRAGUE, Buffalo, N. Y.
R. S. ROBERTSON, Fort Wayne, Ind.
ALEXANDER R. LAWTON, Savannah, Ga.

ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR.

CARLETON HUNT, New Orleans, La.
HENRY STOCKBRIDGE, Baltimore, Md.
U. M. ROSE, Little Rock, Ark.
GEORGE HOADLY, Cincinnati, Ohio.
EDMUND H. BENNETT, Taunton, Mass.

ON COMMERCIAL LAW.

GEORGE A. MERCER, Savannah, Ga.
JAMES T. MITCHELL, Philadelphia.
JULIAN J. ALEXANDER, Baltimore, Md.
LYMAN TRUMBULL, Chicago, Ill.

ON INTERNATIONAL LAW.

THOMAS M. COOLEY, Ann Harbor, Mich.
WILLIAM GASTON, Boston, Mass.
JOHN W. STEVENSON, Covington, Ky.
LEGH R. PAGE, Richmond, Va.
CLARKSON N. POTTER, New York, N. Y.

ON PUBLICATION.

EDWARD J. PHELPS, Burlington, Vt.
JOHN C. DAY, Hartford, Conn.
FRANCIS RAWLE, Philadelphia, Pa.
A. Q. KEASBEY, Newark, N. J.
GILMAN MARSTON, Exeter, N. H.

ON GRIEVANCES.

J. RANDOLPH TUCKER, Lexington, Va.
RICHARD T. MERRICK, Washington, D. C.
JOHN N. ROGERS, Davenport, Iowa.
JAMES S. PIRTLE, Louisville, Ky.
SKIPWITH WILMER, Baltimore, Md.

MEMBERS—AUGUST, 1880-81.

ALABAMA.

BRAGG, WALTER S.	Montgomery.
BUELL, DAVID	Greenville.
CLOPTON, DAVID	Montgomery.
SMITH, LUTHER R.	Mount Sterling.
TROY, D. S.	Montgomery.

ARKANSAS.

BENJAMIN, M. W.	Little Rock.
COHN, M. M.	Little Rock.
HORNER, JOHN J.	Helena.
MOORE, J. M.	Little Rock.
ROSE, U. M.	Little Rock.
TAPPAN, JAMES C.	Helena.
THWEATT, P. O.	Helena.

CALIFORNIA.

POMEROY, JOHN N.	San Francisco.

CONNECTICUT.

ADAMS, SHERMAN W.	Hartford.
AVERILL, ROGER	Danbury.
BALDWIN, SIMEON E.	New Haven.
BREWSTER, LYMAN D.	Danbury.
CHILD, CALVIN G.	Stamford.
CORNWALL, HORACE	Hartford.
CURTIS, JULIUS B.	Stamford.
DAY, JOHN C.	Hartford.
FOSTER, LAFAYETTE S.	Norwich.
HAMERSLEY, WILLIAM	Hartford.
HUBBARD, LEVERETT M.	New Haven.
HUBBARD, RICHARD D.	Hartford.
HYDE, ALVAN P.	Hartford.
KINGSBURY, FREDERICK J.	Waterbury.
MINOR, WILLIAM T.	Stamford.
PARDEE, HENRY E.	New Haven.

CONNECTICUT—Continued.

PHILLIPS, GILBERT W.	Putnam.
PLATT, JOHNSON T.	New Haven.
RUSSELL, TALCOTT H.	New Haven.
SEYMOUR, EDWARD W.	Litchfield.
SEYMOUR, ORIGEN S.	Litchfield.
WALDO, LOREN P.	Hartford.
WATROUS, GEORGE H.	New Haven.
WILLCOX, W. F.	Deep River.
WOODRUFF, GEORGE M.	Litchfield.
WOODWARD, ASA B.	Norwalk.

DELAWARE.

BAYARD, THOMAS F.	Wilmington.
HIGGINS, ANTHONY	Wilmington.

DISTRICT OF COLUMBIA.

ASHTON, J. HUBLEY	Washington.
BOND, S. R.	Washington.
MELOY, WILLIAM A.	Washington.
MERRICK, RICHARD T.	Washington.
MORRIS, M. F.	Washington.
MORSE, A. PORTER	Washington.
PORTER, A. G.	Washington.
WELLS, H. H.	Washington.
WILSON, NATHANIEL	Washington.

GEORGIA.

ANDERSON, CLIFFORD	Macon.
BACON, AUGUSTUS O.	Macon.
CHISHOLM, WALTER S.	Savannah.
ELY, ROBERT N.	Atlanta.
HALL, JOHN J.	Griffin.
HAMMOND, N. J.	Atlanta.
JACKSON, HENRY	Atlanta.
JONES, JR., CHARLES C.	Augusta.
LAWTON, ALEXANDER R.	Savannah.
LYON, R. F.	Macon.
MERCER, GEORGE A.	Savannah.
MILLER, FRANK H.	Augusta.
STEWART, JOHN D.	Griffin.
TOMPKINS, HENRY B.	Savannah.
WHITTLE, L. N.	Macon.

ILLINOIS.

AYER, B. F.	Chicago.
BROWNING, O. H.	Quincy.
CATON, JOHN DEAN	Chicago.
DAVIS, DAVID	Bloomington
HOYNE, THOMAS	Chicago.
KOERNER, GUSTAVE	Belleville.
MASON, EDWARD G.	Chicago.
STORRS, EMORY A.	Chicago.
TRUMBULL, LYMAN	Chicago.

INDIANA.

ALDRICH, CHARLES H.	Fort Wayne.
BEST, JAMES J.	Waterloo.
BUTLER, JOHN M.	Indianapolis.
DAVIDSON, THOMAS F.	Covington.
DURBIN, GREENE	Versailles.
DYER, AZRO	Evansville.
FAIRBANKS, CHARLES W.	Indianapolis.
FISHBACK, W. P.	Indianapolis.
FRAZER, JAMES S.	Warsaw.
GRESHAM, WALTER Q.	Indianapolis.
HARRIS, A. C.	Indianapolis.
HARRISON, BENJAMIN	Indianapolis.
HENDRICKS, A. W.	Indianapolis.
HILL, RALPH	Indianapolis.
HINES, C. C.	Indianapolis.
HORD, OSCAR B.	Indianapolis.
IGLEHART, ASA	Evansville.
KORBLY, C. A.	Madison
LOWRY, R.	Fort Wayne.
MCDONALD, JOSEPH E.	Indianapolis.
MILLER, WILLIAM H. H.	Indianapolis.
MITCHELL, JOSEPH A. S.	Goshen.
PORTER, ALBERT G.	Indianapolis.
ROBERTSON, R. S.	Fort Wayne.
STANSIFER, S.	Columbus.
TAYLOR, EDWIN	Indianapolis.
TAYLOR, NAPOLEON B.	Indianapolis.
TAYLOR, R. S.	Fort Wayne.
TURPIE, DAVID	Indianapolis.
WILSON, JOHN M.	Indianapolis.
WILSON, W. C.	La Fayette.
WINTER, F.	Indianapolis.
ZOLLARS, ALLEN	Fort Wayne.

IOWA.

HAMMOND, WILLIAM G.	Iowa City.
ROGERS, JOHN N.	Davenport.
SHIRAS, OLIVER P.	Dubuque.
WRIGHT, GEORGE G.	Des Moines.

KANSAS.

FEIGHAN, JOHN W.	Emporia.
GUTHRIE, JOHN	Topeka.

KENTUCKY.

BECK, JAMES B.	Lexington.
BENTON, JOHN C.	Covington.
BENTON, M. M.	Covington.
BIJUR, MARTIN	Louisville.
BRECKINRIDGE, WM. C. P.	Lexington.
BROWN, JOHN MASON	Louisville.
BUCKNER, B. F.	Lexington.
CALDWELL, ISAAC	Lexington.
DAVIE, GEORGE M.	Louisville.
HUMPHREY, A. P.	Louisville.
MOORE, J. Z.	Owensboro.
MUIR, P. B.	Louisville.
PIRTLE, JAMES S.	Louisville.
POPE, ALFRED T.	Louisville.
PRESTON, WILLIAM	Lexington.
STEVENSON, JOHN W.	Covington.
THORNTON, ROBERT A.	Lexington.
TONEY, STERLING B.	Louisville.
WILLSON, A. E.	Louisville.
YEAMAN, MALCOLM	Henderson.

LOUISIANA.

ACKLEN, JOSEPH H.	Pattersonville.
BAYNE, THOMAS L.	New Orleans.
BREAUX, G. A.	New Orleans.
FINNEY, JOHN	New Orleans.
GAUDET, J. L.	St. James.
GILLMORE, THOMAS	New Orleans.
HUNT, CARLETON	New Orleans.
HUNT, RANDALL	New Orleans.
JONAS, B. F.	New Orleans.
KNOBLOCK, HENRY CLAY	Lafourche.
MCCONNELL, JAMES	New Orleans.

LOUISIANA—Continued.

MERRICK, EDWIN T.	New Orleans.
OLIVIER, VICTOR	New Orleans.
POCHÉ, F. P.	St. James.
RACE, GEORGE W.	New Orleans.
SEMMES, THOMAS J.	New Orleans.
SIMS, R. NICHOLAS	Ascension.
SPOFFORD, HENRY M.	New Orleans.

MAINE.

BAKER, ORVILLE D.	Augusta.
CLEAVES, NATHAN	Portland.
DRUMMOND, JOSIAH H.	Portland.
FESSENDEN, JAMES D.	Portland.
GOULD, A. P.	Thomaston.
HOLMES, GEORGE F.	Portland.
PUTNAM, WILLIAM L.	Portland.
STETSON, CHARLES P.	Bangor.
STROUT, A. A.	Portland.
WEBB, NATHAN,	Portland.
WILSON, F. A.	Bangor.

MARYLAND.

ALEXANDER, JULIAN J.	Baltimore.
BEASTEN, CHARLES, Jr.	Baltimore.
BOARMAN, ROBERT R.	Towsontown.
BONAPARTE, CHARLES J.	Baltimore.
COWEN, JOHN K.	Baltimore.
CROSS, E. J. D.	Baltimore.
FISHER, WILLIAM A.	Baltimore.
GITTINGS, RICHARD J.	Baltimore.
GROOME, JAMES B.	Elkton.
HAGNER, A. B.	Annapolis.
HINKLEY, EDWARD OTIS	Baltimore.
KEENE, JOHN HENRY,	Baltimore.
KEENE, ROBERT G.	Baltimore.
KNOTT, A. LEO	Baltimore.
LATROBE, JOHN H. B.	Baltimore.
LINTHICUM, THALES S.	Baltimore.
MARSHALL, CHARLES	Baltimore.
MASON, JOHN T.	Baltimore.
MCINTOSH, DAVID G.	Towsontown.
ROBERTS, JOSEPH K., Jr.	Upper Marlboro.
ROSS, WILLIAM J.	Frederick City.

MARYLAND—Continued.

SHARP, GEORGE M.	Baltimore.
SMALL, ALBERT	Hagerstown.
STOCKBRIDGE, HENRY	Baltimore.
TAYLOR, ARCHIBALD H.	Baltimore.
VENABLE, RICHARD M.	Baltimore.
WILMER, SKIPWITH,	Baltimore.

MASSACHUSETTS.

ALLEN, STILLMAN B.	Boston.
ANDERSON, W. H.	Lowell.
BALDWIN, G. W.	Boston.
BELL, C. V.	Lawrence.
BENNETT, EDMUND H.	Taunton.
BROOKS, FRANCIS A.	Boston.
BULLOCK, A. G.	Worcester.
BYNNER, EDWIN L.	Boston.
CHANDLER, ALFRED D.	Boston.
CLIFFORD, CHARLES W.	New Bedford.
CODMAN, ROBERT	Boston.
CRAPO, WILLIAM W.	New Bedford.
ENDICOTT, WILLIAM C.	Salem.
ERNST, GEORGE A. O.	Boston.
FOX, WILLIAM H.	Taunton.
FRENCH, WILLIAM B.	Boston.
GASTON, WILLIAM	Boston.
GILLIS, JAMES O.	Salem.
GOODWIN, FRANK	Boston.
HARRIS, B. W.	E. Bridgewater.
HAYES, WILLIAM A., Jr.	Boston.
HEMENWAY, ALFRED	Boston.
HOWE, ARCHIBALD M.	Boston.
HUNTRESS, GEORGE L.	Boston.
HURD, FRANCIS W.	Boston.
HYDE, HENRY D.	Boston.
JONES, LEONARD A.	Boston.
KNOWLTON, M. P.	Springfield.
LADD, NATH. W.	Boston.
LAMB, S. O.	Greenfield.
LONG, JOHN D.	Boston.
MARSHALL, JOSHUA N.	Lowell.
MARSTON, GEORGE	New Bedford.
MORTON, JAMES M.	Fall River.
MUZZEY, HENRY W.	Boston.

MASSACHUSETTS—Continued.

PIERCE, EDWARD L.	Boston.
RICHARDSON, DANIEL S.	Lowell.
RICHARDSON, GEORGE F.	Lowell.
SAVAGE, THOMAS,	Boston.
SOUTHARD, CHARLES B.	Boston.
SPAULDING, JOHN	Boston.
STETSON, THOMAS M.	New Bedford.
STEVENS, GEORGE	Lowell.
STORROW, JAMES J.	Boston.
SWIFT, M. G. B.	Fall River.
TRAIN, CHARLES R.	Boston.
TREADWELL, JOHN P.	Boston.
WENTWORTH, ALONZO B.	Boston.

MICHIGAN.

ATKINSON, JAMES J.	Detroit.
ATKINSON, O'BRIEN J.	Port Haven.
BALL, DANIEL H.	Marquette.
BLAIR, AUSTIN	Jackson.
COOLEY, THOMAS M.	Ann Arbor.
GEER, HARRISON	Lapeer.
HENDERSON, HENRY P.	Mason.
HUGHES, D. DARWIN	Grand Rapids.
KINSON, A. J. A.	
MONTGOMERY, MARTIN V.	Detroit.
TARSNEY, TIMOTHY E.	East Saginaw.
WEADCOCK, THOMAS A.	Bay City.
WELLS, WILLIAM P.	Detroit.

MISSISSIPPI.

ARNOLD, JAMES M.	Columbus.
EVANS, GEORGE A.	Columbus.
HARRISON, JAMES T.	Columbus.
HOUSTON, LOCK E.	Aberdeen.
HOWRY, CHARLES B.	Oxford.
JOHNSTON, TOBY W.	Columbus.
LEIGH, JOSEPH E.	Columbus.
ORR, J. A.	Columbus.
REYNOLDS, R. O.	Aberdeen.
SIMS, W. H.	Columbus.

MISSOURI.

BAILEY, GEORGE W.	St. Louis.
BLISS, P.	Columbus.
BROADHEAD, JAMES O.	St. Louis.

MISSOURI—Continued.

COLLIER, M. DWIGHT	St. Louis.
HENDERSON, J. B.	St. Louis.
HITCHCOCK, HENRY	St. Louis.
KEHR, EDWARD C.	St. Louis.
MADILL, GEORGE A.	St. Louis.
ORRICK, JOHN C.	St. Louis.
RUSSELL, W. H. H.	St. Louis.
SHIPPEN, JOSEPH	St. Louis.
THOMPSON, SEYMOUR D.	St. Louis.
TODD, ALBERT	St. Louis.
WADE, WILLIAM P.	St. Louis.
WITHROW, JAMES E.	St. Louis.

NEBRASKA.

AMORY, GEORGE K.	Lincoln.
CALHOUN, S. H.	Nebraska City.
LAIRD, JAMES	Hastings.
MANDERSON, CHARLES F.	Omaha.
WOOLWORTH, J. M.	Omaha.

NEW HAMPSHIRE.

BINGHAM, GEORGE A.	Littleton.
BINGHAM, HARRY	Littleton.
CARPENTER, A. P.	Bath.
DREW, IRVING W.	Lancaster.
EASTMAN, SAMUEL C.	Concord.
FELLOWS, JOSEPH W.	Manchester.
HATCH, A. H.	Portsmouth.
LADD, WILLIAM S.	Lancaster.
MARSTON, GILMAN	Exeter.
RAY, OSSIAN	Lancaster.
SHIRLEY, JOHN M.	Andover.
STANLEY, C. W.	Manchester.
WAIT, ALBERT S.	Newport.

NEW JERSEY.

ALLEN, ROBERT, JR.	Red Bank.
BEDLE, JOSEPH D.	Jersey City.
BORCHERLING, CHARLES	Newark.
CLARK, JAMES OLIVER	Newark.
DICKINSON, S. MEREDITH	Trenton.
GARRETSON, A. Q.	Jersey City.
GOBLE, L. SPENCER	Newark.

NEW JERSEY—Continued.

GUMMERE, BARKER	Trenton.
KEASBEY, A. Q.	Newark.
KINNEY, THOMAS T.	Newark.
LITTLE, H. S.	Trenton.
McCARTER, LUDLOW	Newark.
McCARTER, THOMAS N.	Newark.
PARKER, CORTLANDT	Newark.
PARKER, R. WAYNE	Newark.
POTTER, WILLIAM E.	Bridgeton.
TAYLOR, JOHN W.	Newark.
TEESE, FREDERICK H.	Newark.
VREDENBURGH, JAMES B.	Jersey City.
VROOM, GARRET D. W.	Trenton.
WEART, JACOB	Jersey City.
WEEKS, WILLIAM R.	Newark.
WHITE, HENRY S.	Jersey City.
WILLIAMS, WASHINGTON B.	Jersey City.
WOODRUFF, ROBERT S., JR.	Trenton.

NEW YORK.

BAKER, ASHLEY D. L.	Gloversville.
BEAMAN, CHARLES S.	New York.
BENEDICT, ROBERT D.	New York.
BLAKE, CHARLES F.	New York.
BOARDMAN, ANDREW	New York.
BRADY, CHARLES T.	New York.
BRISTOW, BENJAMIN H.	New York.
BULLARD, E. F.	Saratoga.
BURCHARD, NATHAN	Brooklyn.
BURNETT, HENRY L.	New York.
BURRILL, JOHN E.	New York.
BUTLER, WM. ALLEN	New York.
CLARK, THOS. ALLEN	New York.
COMSTOCK, GEORGE F.	Syracuse.
CULLEN, EDGAR F.	Brooklyn.
DANA, FRANCIS E.	Brooklyn.
DAVISON, CHARLES H.	New York.
DUDLEY, JAMES M.	Johnstown.
EATON, DORMAN B.	New York.
EATON, SHERBURNE B.	New York.
EMOTT, JAMES	New York.
EVARTS, WILLIAM M.	New York.
FORSTER, GEORGE H.	New York.

NEW YORK—Continued.

FRENCH, W. B.	Saratoga.
FROST, CALVIN	Peekskill.
GERRY, ELBRIDGE T.	New York.
HALE, MATTHEW	Albany.
HAND, CLIFFORD A.	New York.
HAND, SAMUEL	Albany.
HIBBARD, GEORGE B.	Buffalo.
HOFFMAN, JOHN T.	New York.
JACKSON, SAMUEL W.	Schenectady.
KERNAN, FRANCIS	Utica.
LANDON, JUDSON F.	Schenectady.
LOWREY, JAMES P.	New York.
LYON, W. A.	New York.
MACFARLAND, W. W.	New York.
MARSH, LUTHER R.	New York.
MATTHEWS, ALBERT	New York.
MITCHELL, EDWARD	New York.
MOAK, N. C.	Albany.
NASH, STEPHEN P.	New York.
NELSON, HOMER A.	Poughkeepsie.
NICOLL, DELANCEY	New York.
OLNEY, PETER B.	New York.
PARKER, AMASA J.	Albany.
PHELPS, WM. WALTER	New York.
POND, A.	Saratoga.
PORTER, JOHN K.	New York.
POTTER, CLARKSON N.	New York.
POTTER, PLATT	Schenectady.
PRIME, RALPH E.	Yonkers.
RICHARDSON, CHARLES A.	Canandaigua.
ROGERS, SHERMAN E.	Buffalo.
RUGER, WILLIAM C.	Schenectady.
SCHLEY, WILLIAM,	New York.
SCHOONMAKER, AUGUSTUS, JR.	Kingston.
SCUDDER, HENRY J.	New York.
SHEPARD, ELLIOTT F.	New York.
SMITH, HENRY,	Albany.
SMITH, HORACE E.	Johnstown.
SPRAGUE, E. C.	Buffalo.
STERNE, SIMON	New York.
STICKNEY, ALBERT	New York.
STOUGHTON, E. W.	New York.
SULLIVAN, ALGERNON S.	New York.

NEW YORK—Continued.

TAYLOR, JOHN D.	New York.
VAN COTT, JOSHUA M.	New York.
VANDERPOEL, A. J.	New York.
VAN WINKLE, E. S.	New York.
WARD, JOHN E.	New York.
WARREN, IRA D.	New York.
WHEATON, HENRY	Poughkeepsie.
WHEELER, EVERETT P.	New York.
WHITING, JOHN N.	New York.
WHITNEY, WILLIAM C.	New York.
WILLIS, BENJ. A.	New York.
WINSLOW, JOHN	New York.

NORTH CAROLINA.

KEOGH, THOMAS B.	Greensborough.

OHIO.

BALDWIN, CHARLES C.	Cleveland.
BRAZEE, JOHN J.	Lancaster.
BRICE, C. S.	Lima.
COLSTON, EDWARD	Cincinnati.
CRAIGHEAD, S. C.	Dayton.
DEWITT, E. L.	Columbus.
DAUGHERTY, M. A.	Lancaster.
FERGUSON, E. A.	Cincinnati.
FORCE, MANNING F.	Cincinnati.
GARDNER, MILLS	Washington C. H.
GOTTSCHALL, O. M.	Dayton.
GRANGER, M. M.	Zanesville.
GRISWOLD, SENECA O.	Cleveland.
HARRISON, RICHARD A.	Columbus.
HOADLY, GEORGE	Cincinnati.
HOUK, GEORGE W.	Dayton.
HUTCHINS, W. A.	Portsmouth.
IRVINE, JAMES	Lima.
JOHNSON, EDGAR M.	Cincinnati.
JOHNSON, ROBERT A.	Cincinnati.
JOHNSON, WILLIAM W.	Ironton.
JORDAN, ISAAC M.	Cincinnati.
KING, RUFUS	Cincinnati.
KITTREDGE, EDMUND W.	Cincinnati.
LONGWORTH, NICHOLAS	Cincinnati.
MARTIN, CHARLES	Lancaster.

OHIO—Continued.

MASON, JAMES	Cleveland.
MATTHEWS, STANLEY	Cincinnati.
MCCLINTOCK, W. T.	Chillicothe.
MCMAHON, JOHN A.	Dayton.
MERRILL, N.	Wauseon.
MOORE, OSCAR F.	Portsmouth.
MORRIS, S. W.	Ironton.
NOBLE, HENRY C.	Columbus.
PAGE, HENRY F.	Circleville.
PORTER, W. T.	Cincinnati.
RANNEY, RUFUS P.	Cleveland.
SCRIBNER, CHARLES H.	Toledo.
SHAW, R. K.	Marietta.
SHOEMAKER, MURRAY C.	Cincinnati.
STANBERRY, HENRY	Cincinnati.
TAFT, ALPHONSO	Cincinnati.
YOUNG, W. D.	Ripley.

PENNSYLVANIA.

ARMSTRONG, WM. H.	Williamsport.
BALDWIN, HENRY, JR.	Philadelphia.
BIDDLE, GEORGE W.	Philadelphia.
BISPHAM, GEORGE T.	Philadelphia.
BRUNDAGE, A. R.	Wilkesbarre.
ELLMAKER, NATHANIEL	Lancaster.
FRANKLIN, THOMAS E.	Lancaster.
GREEN, HENRY	Easton.
HAY, MALCOLM	Pittsburgh
HEMPHILL JOSEPH	West Chester.
HOYT HENRY M.	Wilkesbarre.
LEWIS, JOSEPH J.	West Chester.
LITTLE, WILLIAM E.	Tunkhannock.
LUCKENBACH, W. D.	Allentown.
MACVEAGH, WAYNE	Philadelphia.
MCCLINTOCK, ANDREW T.	Wilkesbarre.
MITCHELL, JAMES T.	Philadelphia.
MONAGHAN, ROBERT E.	West Chester.
NORTH, HUGH M.	Columbia.
OUTERBRIDGE, ALBERT A.	Philadelphia.
PALMER, HENRY W.	Wilkesbarre.
PENNYPACKER, CHARLES H.	West Chester.
PERKINS, SAMUEL C.	Philadelphia.
PORTER, WILLIAM A.	Philadelphia.

PENNSYLVANIA—Continued.

PRICE, J. SERGEANT	Philadelphia.
RAWLE, FRANCIS	Philadelphia.
RAWLE, WM. HENRY	Philadelphia.
REED, HENRY	Philadelphia.
SEIBERT, W. N.	New Bloomfield.
SHARP, ISAAC S.	Philadelphia.
SHIRAS, GEORGE, JR.	Pittsburgh.
SHOEMAKER, L. D.	Wilkesbarre.
SLAYMAKER, AMOS	Lancaster.
STEWART, W. F. BAY	York.
STURGIS, E. B.	Scranton.
VAUX, RICHARD	Philadelphia.
WADDELL, WILLIAM B.	West Chester.
WAGNER, SAMUEL	Philadelphia.
WICKES, PERE L.	York.
WOODWARD, STANLEY	Wilkesbarre.

RHODE ISLAND.

BRADLEY, CHARLES S.	Providence.
SHEFFIELD, WILLIAM P.	Newport.
THURSTON, BENJAMIN F.	Providence.

SOUTH CAROLINA.

BACOT, J. W.	Charleston.
BARKER, THEODORE G.	Charleston.
BARNWELL, JOSEPH W.	Charleston.
BOYD, ROBERT W.	Darlington.
BRAWLEY, W. H.	Charleston.
BURNETT, B. R.	Charleston.
CAMPBELL, JAMES B.	Charleston.
DESAUSSURE, WILMOT G.	Charleston.
JEWETT, W. ST. JULIEN	Charleston.
MCGRATH, A. G.	Charleston.
MCCRADY, EDWARD, JR.	Charleston.
MITCHELL, JULIAN	Charleston.
RUTLEDGE, BENJAMIN H.	Charleston.
SIMONTON, C. H.	Charleston.
SMITH, HENRY A. M.	Charleston.
SMYTHE, AUGUSTINE T.	Charleston.
WALKER, G. R.	Charleston.
YOUNG, HENRY E.	Charleston.

TENNESSEE.

Cooper, William F.	Nashville.
Estes, Bedford M.	Memphis.
McNeal, Albert T.	Bolivar.

VERMONT.

Belden, Henry C.	St. Johnsbury.
Burnap, W. L.	Burlington.
Clarke, C. W.	Chelsea.
Crane, W. D.	Newport.
Davenport, Charles N.	Brattleboro.
Dunton, W. C.	Rutland.
French, Warren C.	Woodstock.
Gardner, Abraham B.	Bennington.
Hinckley, Lyman G.	Chelsea.
Johnson, William E.	Woodstock.
Lawrence, L. L.	Burlington.
Noble, Guy C.	St. Albans.
Paul Norman	Woodstock.
Phelps, Edward J.	Burlington.
Poland, Luke P.	St. Johnsbury.
Powell, E. H.	Richford.
Powers, H. H.	Morrisville.
Prout, John	Rutland.
Roberts, Daniel	Burlington.
Shaw, William G.	Burlington.
Smalley, B. B.	Burlington.
Stevens, Hiram F.	St. Albans.
Stewart, John W.	Middlebury.
Tupper, A. P.	Middlebury.
Tyler, James M.	Brattleboro.
Veazey, Wheelock G.	Rutland.
Walker, Aldace F.	Rutland.
Walker, W. H.	Ludlow.
Wheeler, H. H.	Jamaica.

VIRGINIA.

Hamilton, Alexander	Petersburg.
Ould, Robert	Richmond.
Page, Legh R.	Richmond.
Robertson, William J.	Charlottesville.
Tucker, J. Randolph	Lexington.
Walton, Moses	Woodstock.

WEST VIRGINIA.

BOGGESS, CALEB	Clarksburg.
HUTCHINSON, JOHN A.	Parkersburg.
KNIGHT, EDWARD B.	Charleston.

WISCONSIN.

CARY, ALFRED L.	Milwaukee.
CARY, JOHN W.	Milwaukee.
GREGORY, J. C.	Madison.
HOOKER, DAVID G.	Milwaukee.
HUDD, THOMAS R.	Green Bay.
JENKINS, JAMES G.	Milwaukee.
MARINER, EPHRAIM	Milwaukee.
MINKLER, FREDERICK C.	Milwaukee.
PINNEY, SILAS U.	Madison.
VILAS, WILLIAM F.	Madison.

APPENDIX.

ADDRESS

OF

BENJAMIN H. BRISTOW,

PRESIDENT OF THE ASSOCIATION.

GENTLEMEN OF THE ASSOCIATION:—The Constitution of our Association requires your president to prepare and submit to this body, a report setting forth the "most noteworthy changes in the statute law on points of general interest, made in the several states and by Congress during the preceding year." This task, though not an inconsiderable one, is less onerous this year than it would have been if so many states had not established biennial sessions of their legislatures. Biennial sessions now prevail in twenty-five states; and if the people of Connecticut had approved the proposed amendment of their constitution last October, the number would now be twenty-six. But frequent legislative sessions are apparently looked upon more favorably in Connecticut than is the fashion just now to regard them elsewhere, and the proposed constitutional amendment failed to receive a majority of the popular vote. Perhaps it was repugnant to the feelings of a state which once boasted two capitols and two state houses, to be reduced to a legislative body meeting only once in two years. It is the especial good fortune of your president for this year that his term of office falls upon the "off" year of the greater part of these biennial legislatures,—upon the year when the halls of a number of state houses are deserted, and twenty states make no changes noteworthy, or otherwise, in their statute laws. The bulk of session

laws to be examined is thus considerably reduced, and my labors have been further lightened by the kind co-operation of the members of the General Council, who, when called upon for assistance, have, with few exceptions, responded promptly and reported fully.

An old Scotch judge in the course of one of his decisions says: "I am against all innovations. Specious reasons may be assigned for them, but no one can foresee their consequences." Such is not the motto of the modern legislator. Unhesitatingly and confidently he applies his statutory panacea to every evil of society real or imaginary. And as for the consequences, although the legislator may think the Scotch judge right as to innovations generally, he is unwilling to consider the proposition applicable to his own pet measure.

Accordingly, in looking through the session laws, we find a vast amount of legislation,—some that is useful and in harmony with the spirit of progress; some that is amusing, not to say, absurd; much that right minded people, and especially lawyers, must condemn; many curious and original statutes; some whose policy will give the political economist and the moralist food for discussion; and some whose constitutional validity will certainly be denied by the courts. It is curious to notice how quickly the average American legislator turns his attention to the solution of new questions as they arise. For almost every kind of grievance, public or private, lately come into notice, some supposed remedy may be found in the new volumes of statute law. The Chinese are attacked vigorously in California; alleged unjust discriminations and extortionate charges, on the part of railroads, are the subject of legislation by California, Georgia, New Hampshire, and New Jersey; five more states have enacted laws of Draconian severity against the tramp, thereby reducing to still narrower limits than those of a year ago the field within which these sturdy beggars remain free to wander; and the state of Maine, moved thereto, I presume, by the disastrous railroad strikes and riots of the summer of 1877, and particularly by the engineer's strike of that year upon the Boston and

Maine railroad, has passed a statute inflicting severe penalties upon railroad employees who conspire to abandon their occupations and destroy that ready communication between different parts of the country which is now of such vital consequence to every active and enlightened people.

With regard to other new questions of less consequence, legislators have also been active. The recent discussions concerning color blindness have resulted in Connecticut in a law which requires the eyes of railroad employees to be examined by competent persons, and which forbids railroads to employ persons who do not produce certificates from these examiners that their eyes are not subject to this defect of vision. The grave robbers of Iowa and Ohio, owing to the prompt action of the legislatures of those states, now find their lot much harder and their avocation more dangerous than would have been the case, if they had not so excited public indignation by the daring and brutal manner in which their operations were carried on in certain parts of the country. Maine has enacted statutes which will make it dangerous to attempt to meddle with the great seal, or tamper with the state papers, or to assume wrongfully to act as state officials; and the evil doings of Eugene Fairfax Williamson, who caused Dr. Dix so much annoyance and distress last year, moved the New York Legislature to pass a statute to the effect that every person who shall send a letter with intent to cause annoyance to any other person, shall be adjudged guilty of a misdemeanor and be punished by fine or imprisonment or both. This last enactment, if applied strictly to everybody who dispatches letters with intent to cause annoyance to others, might cover a good many cases which were probably not in the contemplation of the legislature.

Several other matters of minor importance catch one's eye while running over the statute books, and deserve a cursory notice. California brings to an end her war against greenbacks and admits them to equality with gold. California and Georgia provide for the appointment of a judge *pro tempore* for the trial of a cause where the parties so agree, who shall exercise

all the functions of a judge in that particular case. Since the decision of the United States Supreme Court declaring the Act of Congress concerning trade-marks unconstitutional, Connecticut has provided for the protection of the rights of her own citizens, in respect of trade-marks, by an act authorizing their registration. Hereafter, it appears, warrants of arrest in California may be dispatched to peace officers by telegraph; and again, in the same state, any person who discloses the contents of a telegraphic message without the consent of the person to whom it is addressed, unless in obedience to a lawful order of court, may be punished by fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both fine and imprisonment. Connecticut exempts from taxation the estate, to the amount of one thousand dollars, of all pensioned soldiers and sailors who have served in the army or navy of the United States; and Georgia, Louisiana and South Carolina undertake to provide artificial limbs for their citizens who lost their legs or arms in the military service of the confederacy. In Louisiana a beneficiary under the act, if he does not believe that the style of limb contracted for by the state will be of use to him, may have the contract price in money, instead of the artificial limb. Connecticut allows its savings banks to employ half their deposits in making loans on personal security. The Maine Sunday law is so amended as to prevent a party to a contract made on Sunday from avoiding it, if he has received any valuable thing as part of the consideration and refuses to restore it. In Massachusetts the law of inheritance has been amended, so that hereafter the husband or wife of a person dying intestate and without issue, will inherit in fee the real estate of the deceased to the value of five thousand dollars in addition to his or her estate of curtesy or dower in the remainder of the property. A New Hampshire law declares that wilful abandonment of a wife shall bar the husband's right of succession to her estate. Georgia, Massachusetts, New Hampshire, New Jersey and Wisconsin have passed acts for the prevention of cruelty to children, which forbid their employment in dangerous, immoral,

or injurious occupations, and provide for the custody of abandoned or cruelly treated children. Georgia, New Hampshire and New Jersey have also humanely established laws for the prevention of cruelty to animals.

The pernicious practice of special legislation has been greatly checked, and in many of the states is now absolutely prohibited by constitutional provisions. But in some states the legislatures are unrestrained in this respect, and the evil continues unabated. The hurtful consequences of the practice are felt in many ways, not the least of which is the tendency to prolong unduly legislative sessions, increase their cost, and to extend to a few, privileges which should be given to all or none. It was hardly befitting the dignity of the legislature of a sovereign state to occupy its time with the act, to be found in the last instalment of the laws of Virginia, which empowers "the principal of Turkey Cove High School, situated at Turkey Cove, in the County of Lee," * * * "to confer such certificates of proficiency and distinction as he may think proper to promote the cause of education." Nor was it exactly fair to the legal profession for the legislature of South Carolina to pass two special acts admitting John Smith and Thomas Jones to the bar, although one was under twenty-one years of age, and the other had not completed the prescribed two years' course of study.

Of the laws of 1880, the California statutes relating to the Chinese have probably excited the greatest interest. The last California legislature actively carried on the crusade instituted by the framers of the new constitution. It provided for the punishment of corporations and officers of corporations who employed Chinese or Mongolians contrary to the provisions of the constitution. It denied to aliens incapable of becoming electors, the right of catching fish for purposes of sale. It directed the legislative authorities of cities and towns to remove the Chinese from their limits, or to set apart certain districts as Chinese quarters. It forbade the intermarriage of whites and Chinese. It made it a misdemeanor for any one on the part of the State or on the part of a town or city or county, to grant a license

to any Chinaman to transact any business or engage in any occupation, and it enacted—what was already a provision of the new constitution—that no native of China should ever exercise the privileges of an elector. This last enactment was justly characterized by my predecessor in this office as an attempt to repeal the Fifteenth Amendment, and of course is a mere *brutum fulmen*, which can hardly frighten even a Chinaman. If the national government should allow the Chinese to become citizens, they will be entitled by the Constitution of the United States to the rights of voters. Whatever may be thought of the desirability of the presence of the Chinese in this country, or of the policy of excluding them, it must be clear to every lawyer that the State of California has, by its new constitution and the acts of its late legislature, undertaken to do what can be accomplished only by the National Government, or by its express consent.

The Fourteenth Amendment of the Constitution and Article VI of the Burlingame Treaty furnish the two chief objections to the validity of these enactments. If, in disregard of the Fourteenth Amendment, they deny to any person within the jurisdiction of California, the equal protection of the laws, or, contrary to the Burlingame Treaty, they refuse to the Chinese all the rights enjoyed in this country by the citizens or subjects of the most favored nations, they must fall to the ground. The law prohibiting corporations to employ Chinese has already been passed upon in the case of Tiburcio Parrott, decided in the U. S. Circuit Court for the District of California, on March 22, 1880. In that case the president of a corporation imprisoned under judgment of a state court for employing Chinamen contrary to the statute, sued out a writ of *habeas corpus* and sought for and obtained his release by the Circuit Court of the United States. It was held that the act of the state legislature, which the petitioner had violated, was void on both the grounds just stated, viz.: That the Burlingame Treaty secured to the Chinaman the rights accorded by our laws to the alien Irishman or German, and that the Fourteenth Amendment protected him

and all other persons within our territory from unjust discriminations and oppression by state legislatures. The correctness of this decision seems unquestionable. It is obvious that these California acts violate the Burlingame Treaty, and the statute relating to corporations is not the first one which has been decided to be in conflict with it.

A law of Oregon forbidding the employment of Chinamen upon the public works came in question before the United States Courts in July, 1879, in the case of Baker *vs.* Portland (20 Alb. L. J., 206), and met the fate which has befallen the later enactment of California. Moreover, a principle of construction has been laid down by the Supreme Court of the United States, in the case of Strauder *vs.* West Virginia (100 U. S., 303), which removes all doubts as to the application of the Fourteenth Amendment to the case of Tiburcio Parrott, and similar cases. All legislation and all state action hostile and oppressive to particular classes of people, are within the prohibition of the Fourteenth Amendment, and the Supreme Court has gone so far as to hold that a state law excluding persons of color from a jury was void for this reason, (Strauder *vs.* West Virginia,) and that a Judge of a County Court might be indicted under the Act of Congress of March 1, 1875, for excluding colored persons from the jury lists which it was his duty to prepare (Ex parte Commonwealth of Virginia, 100 U. S., 339). It will be remembered, also, that the notorious queue ordinance of the City of San Francisco was held by the Circuit Court of the United States to be in violation of the Fourteenth Amendment of the Constitution (Ho Ah Kow *vs.* Nunan, 20 Alb. L. J., 250).

The statute already referred to, forbidding Chinamen to catch fish for purposes of sale, has also been declared void in the case of Ah Chong and others, lately decided in the United States Circuit Court for the Southern District of California (22 Alb. L. J., 62).

Other enactments of the last California legislature, directed against the Chinese, seem open to the same objections. If a statute which prohibits the employment of Chinese by corpora-

tions is unconstitutional, the validity of statutes which drive the Chinese from towns and cities, or confine them to certain quarters thereof, and of all similar enactments, must be seriously questioned.

It seems pretty well settled that any state action looking to the degradation or expulsion of the Chinese must be ineffectual.

A few other laws discriminating against the inhabitants of other states, or of foreign nations, have been enacted during the past year. In Louisiana the crews of foreign vessels are forbidden to work on the wharves or levee of New Orleans beyond the end of the vessel's tackle. Treaty rights to the contrary, however, are excepted from the operation of the act. Louisiana also requires all commercial travellers from other states to pay a license fee of twenty-five dollars a month, and Virginia prohibits fishing in the waters of the state by a non-resident except with a rod, line, or pole.

In Pearson *vs.* The City of Portland, 69 Me., 278, the Maine Supreme Court held that a statute which enacted that non-residents should not recover damages for injuries to the person under a general statute of that state, unless such damages were recoverable in the country of the residence of the plaintiff, was in conflict with the Fourteenth Amendment, in that it denied to persons within the state the equal protection of the laws. It may be doubted whether the Louisiana law imposing a license fee upon foreign commercial travellers does not encroach upon the exclusive power of Congress to regulate commerce between the states. Such a provision may have the effect of discrimination between the products of Louisiana and the products of other states, and whether such discrimination is made or not, was said to be the test of constitutionality by the United States Supreme Court in Guy *vs.* Mayor of Baltimore (100 U. S., 434). In that case a statute of Maryland imposing wharfage dues on vessels laden with the products of other states was held to be invalid.

Under the bankrupt act of 1867, the same objections to the waste and expense of proceedings were felt and the same facilities for discharge from inconvenient obligations were given,

which led to the repeal of the prior acts of 1800 and 1841, and accordingly, on the seventh of June, 1878, the act of 1867 was also abrogated. On the first of September following, the repealing act took effect, and the administration of the estates of insolvent debtors was thereupon relegated to the State Courts. The insolvent acts of many of the states are very imperfect. At best, state legislation must necessarily fall far short of the establishment of a uniform system of bankruptcy for the distribution of the effects of insolvent debtors, such as every commercial people require. In the absence of a National bankrupt law, some attempts have been made lately to remedy the defects of state statutes. Vermont in 1876, Maine in 1878, and Maryland and California during the present year, have enacted insolvent laws providing for both voluntary and involuntary proceedings, and for discharge of the debtor from his obligations independently of the assent of his creditors.

In most of the states provision of some sort is made for the equable distribution of the property of insolvents, and in some, in addition to those already referred to, voluntary proceedings may be instituted. In others discharges are granted in cases where a majority of creditors consent thereto. But only Maine, Vermont, Maryland, California, Massachusetts, and Connecticut, now have laws which attempt to fill the place of the bankrupt act of 1867. Aside from the inconvenience which must result from want of uniformity, the limitation upon the powers of the states, as declared by the United States Supreme Court in the case of Ogden *vs.* Saunders (12 Wheat, 213) and subsequent cases, presents an insuperable obstacle to any really effective and satisfactory bankrupt laws by the states. The four state statutes of recent date, to which I have referred, have been in force for so short a time that little or no experience of their operation has been had. With regard to the earliest of them—the Vermont statute—it is said that very little has been done under it, and the court of final jurisdiction has had no cases before it involving the construction or validity of any of its provisions. The Maryland law is much less elaborate than

those of the other three states, and leaves much to be determined by the courts. Up to the assignment of the insolvent's estate, and his discharge, granted under the provisions of the act immediately thereafter, the proceedings are governed by rules sufficiently definite, but little instruction is given as to what is to follow. No provision is made for the proof of claims, and the only regulation as to the distribution of assets, or the duties and powers of the assignee, is that "the estate of the insolvent shall be distributed under the order of the court according to the principles of equity." Until this year the laws of Maryland provided for voluntary proceedings in insolvency, but for voluntary proceedings only. Last April, the old insolvent act was extensively amended, and sections added providing for involuntary proceedings. The new insolvent laws of Maine, Vermont, and California, go much more into detail, and bear a general resemblance to the National bankrupt act. A peculiarity of the Maine act is, that to maintain involuntary proceedings under it, it is not necessary for a creditor to show a specific act of bankruptcy, but only to allege and prove generally that his debtor is insolvent. All four set aside preferences, if made in contemplation of insolvency within a certain time before the commencement of proceedings. Four months is the period prescribed by Maine and Vermont, sixty days by Maryland, and one month by California. Attachments are dissolved in Maine by the commencement of proceedings unless four months old, and in Vermont unless of sixty days standing. Vermont grants a full discharge from debts due residents of Vermont, and from debts due non-residents also, if they come in and prove their claims. The California and Maine statutes purport to grant a discharge from all claims provable against the estate, unless fraudulently contracted.

It is reported that several bills to establish a uniform bankrupt law, one of them drawn by a learned Circuit Judge of the United States, and another by a member of the New York bar, have been presented to Congress recently, and it is to be hoped that out of these Congress will be able to construct a permanent

bankrupt law adequate to the growing need of our commercial people and just alike to the creditor and the honest debtor.

Within the past three or four years several states have enacted statutes regulating voluntary assignments for the benefit of creditors. Illinois passed a law of this sort in 1877, Oregon in 1878, and Texas and Michigan in 1879. Missouri also, in 1879, extensively amended her existing laws upon this subject. All these new acts forbid preferences, their framers declining to follow the example of the chief commercial state, New York, which adheres to the common law in this respect. Texas, Michigan, and Oregon require that the assignment shall embrace all the property of the debtor. None of them grant a discharge to the debtor, but merely provide for the *pro rata* distribution of his property. By the Texas statute the debtor may make the assignment for the benefit of those creditors only who agree to release their claims upon receiving their proportionate shares of the estate. Other states have older statutes relating to assignments by debtors which need not now be noticed.

The second part of the New York Code of Civil Procedure was passed in May last, and will take effect on the first of September next. This completes the revision of the New York statutes relating to practice, including those contained in the revised statutes, the old code of procedure, which has served as a model to the legislatures of so many other states, and numerous volumes of the session laws. The new code has been much criticised and has encountered persistent opposition. It is not easy for a lawyer in active practice to master a statute of 1,500 sections, and if it makes many changes in the existing law much time and labor must be spent in discovering them. The first part of the new code made many such changes and a number of them related to those portions of the law of procedure which the practioner should have at his fingers' end. It is not surprising, therefore, that for some time the revision should have occasioned some embarrassment and uncertainty, and that these temporary consequences of its enactment should have aroused at first, especially among the older lawyers, a strong feeling

against it. But as time goes by, the general verdict seems to be that on the whole the results have been beneficial, that the advantages of a revision of the law of practice are great, that the changes are not so radical as was at first supposed, and that the greater part of them are improvements. Such was the opinion of the Committee on Law Reform of the New York State Bar Association last November, which also recommended the adoption of the additional nine chapters of the Code of Civil Procedure as completed by Mr. Throop and his colleagues. These nine chapters comprise 1861 sections, or 366 more than the first part. The greater part of the old code was incorporated in the first thirteen chapters, which contain the most of the more important rules of practice, being devoted chiefly to proceedings in ordinary actions in courts of record. The provisions of the second part are mainly of more limited application. In the first four of the additional nine chapters are collected the various rules of procedure applicable to particular actions and special proceedings, the rules, for instance, which regulate an action for partition or to foreclose a mortgage, or to recover a chattel, or to procure the dissolution of a corporation, or which relate to *habeas corpus* proceedings, or the writ of mandamus, or the writ of certiorari, or summary proceedings to recover the possession of real property, or proceedings supplementary to execution. The next three chapters treat of the jurisdiction of certain courts to which the provisions of the first part were not applicable, and of the procedure therein, of surrogates' courts, and courts of justices of the peace, of the Marine Court of the City of New York, and of other city courts. The next chapter contains the law of costs and fees, and the last is made up of definitions and rules of construction and application. James Fitzjames Stephen, one of the chief advocates of codification, recommends that perfection should not be demanded in the beginning, but that the code should be passed first and amended afterwards, as experience may require. This has been the course adopted by New York. Since the legislature of 1876 enacted the first thirteen chapters, numerous amendments have

been adopted at each succeeding session. Ten such amendments were made by the legislature of 1880. Whatever difference of opinion may exist among lawyers as to the desirability of codes of procedure as substitutes for the old system of practice, it surely is matter for congratulation that the partial and fragmentary work of the New York legislature has at last assumed the form of a complete system of procedure.

The railroad problem still occupies, to some extent, the attention of our legislators. In spite of the agitation which this subject has occasioned, legislation has done little to solve the problem. Undoubtedly our present system of transportation stands greatly in need of reform. The wild fluctuations in rates which a fierce competition induces, are as detrimental to business as the variations in the value of a paper currency, and introduce the same element of uncertainty into the calculations of every farmer, trader, manufacturer, and capitalist. Scarcely a product of human industry can be named the cost of which is not to a considerable extent dependent upon the cost of transportation, and frequent, sudden, and unforeseen variations in this factor of value, must tend to assimilate legitimate business of every description to speculation and gambling. And in localities where competition cannot act upon prices, the extortions which railroads often practice under the alleged necessity to compensate themselves for the losses which competition at other points occasions, are equally unjust and even more galling. Great as these evils are, it is not easy to find a remedy for them. The vicissitudes of commerce are necessarily so great and so difficult to foresee, and the circumstances to be considered so different in the cases of different railroads, that it seems impossible for legislatures to lay down any general rules determining rates of transportation which shall at once be just to the railroads and their patrons. Such, at least, has been the experience so far of the legislatures of this country. The unreasoning hostility to railroad corporations prevalent in certain sections of the country, and the inability of some of our legislatures to resist the temptation which the railroad lobbyist is able to

present, add peculiar difficulties to the solution of the problem by legislation. The present state of affairs is no more satisfactory to the railroads than to the people. Competition has brought many railroads to ruin. It has often induced the construction of a second railroad where business existed for only one. The railroads, however, find a partial remedy in combination, and it is considered probable by many, that the great combinations and consolidations which are continually forming at the present day, may, at last, if unchecked by legislative action, put an end to all the evils which competition has engendered, whatever greater evils may then arise as the outgrowth of monopoly.' In the opinion of some, such a change will be for the better. It is claimed that public opinion can be brought to bear more strongly upon a single great corporation than upon a host of smaller ones, legislative supervision can be exercised more effectively, and the consequences of legislative action foreseen more easily. Competition among railroads has been attended with a lamentable waste of labor and material. If one railroad is built between two towns capable of performing all the business which they can offer it, whatever cause for complaint the owners of it may give, some other remedy should be found and applied than the construction of another road at the cost of millions of dollars, thereby wasting the resources of the country and vastly increasing the rates which must thereafter be charged to afford a profit to the carrier. Outside the United States, the different corporations which make up the chief railroad systems of the world no longer compete with each other, and the anticipated evils of monopoly do not seem to have resulted. With regard to one corporation, the North Eastern of England, a Parliamentary Commission in 1872 reported that it then embraced thirty-seven lines, several of which formerly competed with each other; that these lines before their amalgamation charged high rates and paid low dividends; that the system was now the most complete monopoly in England; that from the Tyne to the Humber, with one local exception, it now had the country to itself, and that it had the lowest rates and

highest dividends of any large English Company. A railroad company unhampered by competition undoubtedly can do much more for its patrons, if so inclined. The only difficulty is as to its inclination. And in the case of railroads, competition is not only an extremely expensive check to the dictates of self interest, but one which may be evaded by combination, so far as the interest of the public is concerned. A system of railroads proportionate to the needs of the country, affording transportation between all places of sufficient importance to demand it, but never extravagantly providing two lines where one would be sufficient, on which the rates of transportation should bear the proper ratio to the cost of building and management, and should fluctuate seldom and slowly,—such a system may be the dream of the economist, but it is one which can hardly be the outgrowth of competition.

During the past year the legislatures of Georgia, New Hampshire, New Jersey, and California, have attempted one or two steps toward the realization of this ideal. California has passed a law forbidding common carriers to give a preference to one person over another. New Hampshire has declared that no railroad shall make a greater charge for the carriage of freight when delivered at a certain point, than it does when the freight is carried to a point beyond. The practice against which this New Hampshire statute is directed leads to very absurd results, and has been productive of some curious litigation. Mr. Charles Francis Adams, Jr., in his book on the Railroad Problem, speaks of a certain Massachusetts railroad company which made an extra charge of twenty dollars if the owner of a carload of freight consigned to Boston desired that it should be delivered at a point on the route one hundred miles this side of Boston. We read in the papers of a young man travelling from Boston to New York, who, after having purchased a ticket to New York, refused at first to pay an additional dollar and sixty cents for the privilege of stopping at Newport, and brought suit for false imprisonment against the company for detaining him until he did so. New Jersey has enacted that railroad

companies doing business in that state under a special charter shall not charge more than three and a-half cents per mile per passenger.

Georgia has gone into the matter much more thoroughly than any of the other states, however, and turned the whole problem over to a board of commissioners. These commissioners are to be appointed by the governor, by and with the advice and consent of the senate, are to be three in number, and are to serve six years. In them is vested power to establish just and reasonable schedules of rates for the carrying of freight and passengers for every railroad doing business in the state. They have also power to establish rules against unjust discrimination. All agreements between different companies as to rates, and as to divisions of earnings, must be submitted to these commissioners for approval, and, if disapproved by the commissioners, or contrary to the rules and regulations and schedules of rates established by them, such agreements shall be illegal and void. The schedules prepared by the commissioners must be advertised in the papers and posted in the railroad stations. All charges must be made in accordance therewith, and severe penalties are provided for railroads violating the regulations of the board. Full powers of investigation into the affairs of the railroads are given the commissioners, and they are authorized and directed to prosecute for any violation of their ordinances. The statute, it will be seen, leaves the whole matter to a commission. It is appointed, not merely for purposes of investigation or to enforce the laws, as has been the case, so far as I know, with all the other commissions which have been appointed lately for similar purposes, but to make rules and regulations having the force of law. If half we hear of railroads and their managers is true, these commissioners will deserve great credit if they perform their duties honestly, and though they possess the greatest honesty of purpose, we can hardly hope, in the light of experience, to see them altogether successful. Nevertheless, the experiment is an interesting one, and its results will be awaited with curiosity.

A question, which has been discussed of late, is the possibility of suing a state and compelling it to perform its contracts. On the assumption that such a suit may be maintained in the United States Supreme Court by a State acting for the holder, the legislatures of New Hampshire and New York have passed acts which permit citizens of those states holding written obligations to pay money issued by any of the United States, which are due and unpaid, to assign the same to the state. In case the attorney general of the state shall be of opinion that such assignment gives the state a valid claim, he is directed to bring suit against the debtor state, at the expense of the assignor, but in the name of the state, to prosecute the suit to judgment, to collect the claim, and to pay over to the assignor all moneys recovered, after deducting sufficient to cover expenses not already paid. It is well known that in Chisholm *vs.* The State of Georgia (2 Dall., 419), the Supreme Court decided that a private individual might sue a state in assumpsit, considering that this right was secured to him by the section of the constitution which provided that the judicial power of the United States should extend to controversies between a state or the citizens thereof, and foreign states, citizens, and subjects. This suit, however, and all others of a similar character then pending against states, were swept from the records of the court by the eleventh amendment to the constitution shortly after adopted, declaring that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state." The jurisdiction of the Supreme Court of controversies between two or more states is in no way affected by this amendment. In the suits that may be brought pursuant to these new enactments of New York and New Hampshire, the question will be whether a state may bring such a suit against a sister state for the enforcement of the private rights of one of its citizens. This question has been elaborately and ably discussed by Mr. Bradley T. Johnson, of Virginia, in

the American Law Review for July, 1878. In a paper contributed to the North American Review for January, 1844, by the late Benjamin R. Curtis, the foremost American lawyer of his time, the author expressed the opinion that a foreign government might accept from one of its citizens a bond of one of the states of the Union and maintain suit on it in the United States Supreme Court. The subject is treated with the accustomed clearness and conciseness of Judge Curtis, and his argument seems unanswerable. Whether the same thing might be done by one of the states of the Union is a question not considered by Judge Curtis, and to which his argument is hardly applicable.

When we consider that the decision in Chisholm *vs.* Georgia led immediately to the adoption of the eleventh amendment, it may seem at first that it was proposed and carried with the view of preventing such suits, and that to allow a creditor to sue in the name of his state would be an evasion of the amendment, and defeat altogether the intention of its framers. On the other hand, it is argued that such a construction is perfectly consistent with the letter of the constitution, and the strongest reasons of public policy may be urged in favor of it. One suit under these enactments has been commenced already, that of the State of New Hampshire against the State of Louisiana. In the fall of 1879, Louisiana adopted a new constitution, one article of which "*remitted*" the interest on the state debt, due January 1st, 1880, and diverted any taxes collected to pay said interest to the payment of the expenses of the state government. Certain Louisiana bonds have been transferred to the State of New Hampshire by one of its citizens, and the state has brought suit in the Supreme Court of the United States to restrain this proposed diversion. No decision upon the main question has been given as yet, the court having declined, upon a motion for a preliminary injunction, to commit itself upon so important a matter on an interlocutory application. Although no other state has found so euphemistic a name for repudiation as "remission," many have been guilty of the act itself during the past few years. Mr. Porter, of the Census Bureau, to whom

has been assigned the task of collecting statistics relating to wealth, debt, and taxation, is reported as saying that the total state indebtedness, which amounted in 1870 to $352,866,000, is now stated as only $226,445,000, and that at least one hundred millions of this decrease is to be accounted for by repudiation by certain states. No right-minded man can contemplate this wholesale confiscation of private property, this inexcusable spoliation of individual rights, without a sense of mortification and shame for the dishonor which it brings upon the American name and credit.

The inroads which state legislatures have made upon the domain of the common law, have not been extensive. Some modifications, however, of the familiar rules of common law are to be noticed. Kentucky has a new factor's act, giving validity to a sale or pledge of merchandise by a factor if he has been entrusted with the possession of the merchandise, or the documentary evidence of title thereto, so far as to protect any *bona fide* purchaser or pledgee, who shall have parted with value on the faith of such possession or evidence of title. Similar statutes have already been enacted in many of the states, and in England. The Kentucky statute seems to have been modelled on the New York factors' act of 1830, and, to some extent, adopts its phraseology. Massachusetts has enacted that life insurance polices shall not be forfeited for non-payment of premium after two full annual premiums shall have been paid thereon. South Carolina declares that no lien on real estate shall continue more than twenty years from the time of the creation thereof, unless the holder of the lien during its continuance shall note upon the record of the lien some payment on account, or file with the record some written acknowledgment of the debt; in which case the lien shall continue for twenty years longer.

In New York, two questions in the law of evidence, as to which a great deal of uncertainty has existed, have been settled. The rule as to comparison of writing has been declared to be that a writing, the genuineness of which is disputed, may be compared by the jury with writings which are proved to

the satisfaction of the court to be genuine. The testimony of witnesses as to genuineness based upon such comparison shall also be admissible.

The other question relates to the testimony of husband and wife. In New York, husband and wife are in general competent witnesses for or against each other in civil causes. Certain exceptions exist with regard to confidential communications and actions of *crim. con.* Whether the general rule should apply to actions founded upon allegations of adultery is a matter as to which the legislature has displayed considerable indecision, having changed its mind twice during the last two years. Up to 1879, the rule as to such actions was that husband and wife were not competent witnesses to establish any fact, except the fact of marriage. In 1879 this restriction was removed, and husband and wife became competent witnesses in actions founded upon allegations of adultery to the same extent as in other actions, but in 1880 the original rule was again adopted. However great may be the probability of collusion between husband and wife in such an action, that is a consideration, it seems to me, which should affect the weight of the evidence rather than its admissibility. A provision that such testimony should be insufficient unless corroborated by other evidence, might be salutary, but to exclude it altogether, because it may mislead, shuts out light which might otherwise be thrown upon the issues, and is contrary to the spirit of the modern law of evidence. The English law expressly declares that in proceedings instituted in consequence of adultery the parties and their husbands and wives shall be competent witnesses (32 and 33 Vict., Chap. 68, Sec. 3).

Some of the additions which have been made to the criminal laws of the states are noteworthy. Five states, as I have already said, to wit: the States of Maine, Maryland, Massachusetts, New York, and Rhode Island, passed stringent acts against tramps at the last sessions of their legislatures. The number of "tramp acts" now in force must be very considerable. Prior to 1880 four states, at least—New Hamp-

shire, New Jersey, Delaware, and Connecticut—passed such laws. The new statutes resemble each other closely. Every tramp is declared guilty of a misdemeanor, and is to be punished on conviction by imprisonment. The period of imprisonment varies in the different states. New York is the most lenient, and fixes six months as the maximum limit. In Rhode Island it is provided that the term of imprisonment shall not exceed three years or be less than a year. Tramps carrying fire-arms are severely punished by imprisonment at hard labor, in some states for a period not exceeding two, and in others for a period not exceeding three years. Tramps entering dwelling houses without leave, or maliciously threatening injuries to the person or property of another, are also punishable by imprisonment for two or three years, and a still greater punishment is provided for those doing actual injury to person or property. The act is generally declared inapplicable to females, minors under a certain age, and blind persons. If legislation of this character becomes the fashion in all the states, it seems probable that the tramp will soon cease to exist—public opinion will certainly afford no obstacle to the enforcement of such laws. From three of the states where statutes for the punishment of tramps have existed for some little time—New Hampshire, Connecticut, and Delaware—the reports as to their operation are very favorable. The member of the council for New Hampshire, in his report as to the statutory changes in his state, says, of the New Hampshire tramp act—"There have been a few arrests, and perhaps two or three convictions. The tramps took notice of the law and left the state. Prior to the passage of the act we were overrun by tramps, but since September, 1878, we have had no trouble with them." In Connecticut the Hartford Courant recently requested information from every city, town, and borough of the state as to the working of the law. Seven columns of answers were received, and, with three exceptions, all expressed satisfaction with its operation. A gentleman writes from Delaware to the Albany Law

Journal, to call attention to the effectiveness of the tramp law of that state.

New Jersey has passed a law which forbids employers to pay their workmen in merchandize, or "store orders," so called. Many complaints have been made of the extortions practised upon employees by manufacturers and others who maintain large stores in connection with their business, and secure patronage for them by paying wages with orders for goods, instead of cash. Such an arrangement, while often convenient to employees, of course gives the employer an opportunity to sell a poor article for a high price. In New Jersey, in case such payments are made, the employer still remains liable to the workman for the full amount of his wages, in addition to the orders so paid out, and is moreover guilty of a misdemeanor punishable by fine or imprisonment. In South Carolina the intermarriage of whites with Indians or negroes, has been made a crime, and in California the issuing of licenses for the marriage of whites with negroes, as well as with Chinese, has been prohibited. The South Carolina statute declares that the marriages which it prohibits shall be null and void. Nevertheless it further provides severe penalties for persons who indulge in the idle ceremony, which is declared wholly ineffectual, except for the purpose of securing to the state the money and services of persons who do not acquiesce in the policy of the legislature in a matter of taste. It will be remembered that in 1878 a negro and white woman who violated the laws of Virginia upon this point, were promptly tried and convicted and locked up for five years. In Ex parte Kinney, 3 Hughes 9, the United States Circuit Court for the Eastern District of Virginia, sustained the action of the state court, holding that the Virginia statute was not in conflict with the Fourteenth Amendment. Such an enactment, the court said, could not be said to be a discrimination within the inhibition of that amendment, since it could never impose any restraint upon a person of color, without bearing exactly as hard upon some white person of the

opposite sex. Severe laws against lobbying have been enacted in Georgia, and California has made its former statutes relating to this offence still more stringent. The Georgia statute provides that a lobbyist, on conviction, shall be punished by imprisonment for a term of not less than one or more than five years, and a long and rather clumsy definition of lobbying is given, which seems to cover only those cases when the lobbyist acts as an agent, and to leave one free to lobby in his own interest with impunity.

As is usual, numerous attempts have been made to regulate the sale of intoxicating liquors. Georgia, Iowa, and Louisiana, have all passed laws making it a misdemeanor to sell or dispense liquors on election days within a certain distance of the polls. The legislatures of Maryland and Virginia, following the example of other states, seem to have adopted the principle of Sir Wilfred Lawson's permissive bill, of which we hear from across the water now and then, and which was defined in verse by a late British judge to be:

> "A little simple bill that wishes to pass *incog.*,
> To *permit* me to *prevent* you from having
> Your glass of grog."

Accordingly several counties have been empowered by the legislatures of those states to decide for themselves whether the sale of liquors shall be permitted within their limits or not. Georgia has a statute which makes it felony for a bank officer to receive deposits knowing his bank to be insolvent, if the deposits are not repaid within three days after demand. A New Hampshire statute makes it a crime to obtain labor under false pretences. Iowa now has a law which leaves it to the jury to decide in capital cases whether the prisoner shall be hanged or imprisoned for life. In case the prisoner pleads guilty the judge must determine which punishment shall be inflicted.

In Virginia a proposed amendment to the constitution will soon be voted on which excludes any citizen who fights a duel or assists at a duel, from the elective franchise and from holding any office under the constitution. A similar provision already exists in

some states. Another measure in the interest of public morality is the abolition of the Louisiana state lottery, and the passage of an act by the Louisiana legislature forbidding the establishment of lotteries and the sale of lottery tickets in that state. But the new constitution of that state assumes the act to be in conflict with the contract clause of the Constitution of the United States, and therefore void. In Stone *vs.* State of Mississippi (22 Alb. L. J., 8), the Supreme Court of the United States has lately held that a law depriving a lottery company of its charter is not unconstitutional as impairing the obligation of a contract. A legislature, the court say, cannot bargain away the public health, or the public morals.

In addition to the penal statutes which have been passed, some states have endeavored to drive out and destroy the devil—who, according to the old form of indictment, instigates all offenders against the law to the commission of crime—by the enactment of laws looking to the reformation of criminals. Iowa, Massachusetts, and Wisconsin have established rules providing for the diminution of the terms of imprisonment of convicts in case of good behavior. These rules enable the prisoner to determine precisely at what date his term will expire in case his conduct gives satisfaction to the keeper of the prison, and, where the term is a long one, a very considerable deduction is made. Such rules seem well calculated to secure order, but it would be expecting too much of them perhaps to anticipate any real "change of heart" among prisoners as a consequence of their adoption. They undoubtedly create a conviction that "honesty is the best policy," while in jail, but do little to make it plain that the same rule holds outside the prison walls. The Massachusetts legislature has embodied a novel idea in a statute providing for the appointment of "probation officers," so called. It is made the duty of these officers to examine into the cases of persons arrested for crime, and determine whether they may reasonably be expected to reform without punishment. If they so recommend, the court may order the prisoner to be released on probation upon such terms as it may deem just. The

probation officers may also inquire into the cases of convicted prisoners, if the term of imprisonment, which they have still to undergo, does not exceed six months, and recommend their release on probation. If the court so directs, or, in case of the superior court, the district attorney and the county commissioner concur in the recommendation, the prisoner is to be released, but on probation only, and may be rearrested and confined for the remainder of his term. If the duties of these officers are wisely performed, it seems that some good may be accomplished. No doubt it often happens that a man of average morality who desires to do right, and for a long time has succeeded as well as most men, takes at last a single false step in a moment of dire temptation, and cases of sincere repentance may exist among criminals and convicts. General rules which create rewards for good behavior are not likely to defeat the ends of criminal statutes, and a sound discretion may well be exercised in favor of the most meritorious of the criminal classes, to save them from utter and hopeless degradation injurious to themselves and useless to the state.

A few miscellaneous matters remain to be noticed. In Connecticut next October a proposed constitutional amendment will be submitted to the people, which declares that the judges of the Supreme and Superior Courts shall be appointed by the general assembly upon the nomination of the governor. Last October, in the same state, another proposed constitutional amendment providing that judges should leave the bench at the age of seventy-five, was defeated, and the old law under which judges became superannuated at the age of seventy remains in force. The Connecticut law is a more reasonable one than the statute which ousted Chancellor Kent from the New York bench at the age of sixty, but judges frequently retain their power to a greater age than seventy, and a good judge is too valuable to the state to be removed by the operation of a cast-iron rule, while mind and body remain unimpaired.

Two useful statutes have been passed in Georgia and Iowa, providing for the appointment of commissioners of immigration.

The duties of the Iowa commissioners are somewhat vaguely defined to be to induce capital and industry to seek investment and employment in the state. The Georgia statute is more specific. The commissioner is directed, among other things, to disseminate correct information as to the soil, climate, production, and resources of Georgia, to arrange special rates of transportation for immigrants, and to keep in his office a registry of lands for sale, and of persons who desire to purchase lands, or to procure employees or employment. It is plainly of the greatest importance that definite information should be given the vast numbers of immigrants now landing on our shores, concerning the occupations in which there is room for them.

Georgia has also enacted a usury law, fixing the legal rate of interest at eight per cent, and declaring that any person exacting a higher rate shall forfeit all interest. The policy of usury laws has been seriously questioned of late, and the tendency of modern legislation is in the direction of their abolishment. New York is one of the few states which still possess an out and out usury law, declaring both principal and interest forfeited in case a usurious loan is made. In twelve states and territories usury laws no longer exist. In sixteen the only penalty which they impose is the forfeiture of the interest. And in ten more the lender forfeits only the excess of the contract rate over the legal interest.

Another statute, which will meet the disapprobation of those who believe that special industries should not be stimulated at the expense of others, has been passed in New Hampshire. It provides for the payment of bounties to manufacturers of beet sugar. New Jersey, also, offers bounties to persons raising flax, jute, and hemp.

New Hampshire has taken action upon the vexed question of taxation of church property, and hereafter all churches in that state, valued at more than ten thousand dollars, must pay taxes upon the excess of their valuation over that sum.

Among the statutes of Louisiana for 1880, is a curious law providing for a license tax to be levied on persons engaged

in a number of different occupations. Almost all occupations, except those of farmers, laborers, and mechanics, seem to be made subject to this tax. The act specifies persons engaged in manufacturing, or banking, or in any wholesale or retail business, or in the business of insurance, or carrying or storing goods, attorneys, physicians, editors, and many others. The amount to be paid varies according to the nature of the occupation and the amount of business done. A bank, for instance, pays a license tax of twenty-five hundred dollars, if its average deposits for the year amount to two millions and a half. A pawn broker, whose capital in actual use amounts to fifty thousand dollars, must pay an annual tax of two thousand dollars. A lawyer, if his gross receipts exceed ten thousand dollars, must pay fifty dollars, but if less than two thousand, only five dollars. Provision is made for the examination of books and papers for the purpose of discovering the amount of business done, and the tax collector is allowed a commission of two and a half per cent. on all license fees paid. It is not easy to imagine a more vexatious tax than the one imposed by this statute. It is inquisitorial, and therefore offensive to the citizens of a free country. The burden of a year's interest on the state debt should have seemed a trifling one in comparison. It obliges every business man to lay open the whole record of his private affairs before the tax collector, and for this reason must become odious to the people who are subject to the inquisition.

Other statutes of recent date might be noticed, but I am not unmindful of the excellent advice of my predecessor in office at our last meeting, that we should not undertake to accomplish too much in the early days of our association, and I forbear to weary you further.

The third annual meeting of the American Bar Association is now organized. I congratulate you upon the large attendance and the gratifying evidence of increasing interest in our association.

PAPER

READ BY

HENRY E. YOUNG.

Sunday Laws.

This subject, I fear, will be without much general interest. The laws for the observance of Sunday, though on the statute books of all of our states, have fallen into such disuse that they seldom come to the attention even of our profession, except when used as a short-hand way of getting rid of some nuisance on Sunday, which is otherwise prohibited; or when pleaded by some corporation as a defence to some action for neglect of duty.

Still, one of the objects of this association is "to promote uniformity of legislation throughout the Union," and it has, therefore, seemed to me not inappropriate to ask your attention to a branch of the law in which this uniformity is sadly wanting. May I also be permitted the hope that the attention thus called, will result in the removal from our statute books of laws, in many respects, repugnant to the views and habits of our people, and which meet with little respect, and still less observance.

Whether or not a rigid observance of Sunday, in the spirit of the Hebrew Sabbath, was taught by the early church, or is the later growth of the spirit which we now call Puritanism, is a matter of dispute, and for the purposes of this paper, of no consequence. In this country the rules of a church are without legal sanction, and in no true sense, laws.

Some, it is true, have held that these Sunday laws are so inseparably connected with religious belief, that they abridge that freedom of conscience which the constitution guarantees.

This has been objected to them in several states, notably in Pennsylvania, Ohio, New York, Missouri, Indiana, Arkansas, and California, but in all of them overruled. California, in its earliest decision, sustained the objection; but shortly after reversed this.

Doubtless these laws have their source in the religious customs and habits of our people; but still in a land where the state keeps itself wholly apart from matters of religion, they are merely police regulations, and rest upon the right and the duty of every social organization to enforce whatever conduces to the welfare of itself, and its members, and is necessary to good order.

Speaking of these Sunday laws, C. J. Lowrie, in Commonwealth *vs.* Nisbet, 34 Pa. 406, 407, says: "They proceeded from an earnest Christian people, who never thought of tolerating paganism or the principle of ecclesiastical supremacy in civil affairs on the ground of liberty of conscience. They could not admit this as a justification of human sacrifices or parricide or infanticide or thuggism. * * * By our Sunday laws and other laws against vice and immorality we do not mean to enforce religion. We admit that to be impossible. But we do mean to protect our customs, no matter that they may have originated in our religion, for they are essential parts of our social life. Instinctively we protect and defend them. It is mere social self-defence."

"It cannot be maintained," says Scott J., in State *vs.* Ambs, 20 Mo. 214, "that the law exacting a cessation from labor on Sunday compels an act of religious worship. Because divines may teach their churches that the reverential observance of the Lord's day is an act of religious worship, it by no means follows that the prohibition of worldly labor on that day was designed by the General Assembly as an act of religion."

To this substantially conform the decisions of our states.

The earliest civil law on the subject, that is known, is that of Constantine, A. D. 321. Fr. 3, C. de feriis III., 12, viz.:

"*Omnes judices urbanaeque plebes et cunctarum artium*

officia venerabile die solis quiescant. Ruri tamen positi agrorum culturae libere licenterque inserviant, quoniam frequenter evenit ut non alio aptius die frumenta sulcis aut vineae scrobibus commendentur, ne occasione momenti pereat commoditas coelesti provisione concessa."

Dr. Hessey translates this as follows: "On the venerable day of the sun let the magistrates and people residing in cities rest, and let all workshops be closed. In the country, however, persons engaged in the work of cultivation may freely and lawfully continue their pursuits, because it often happens that another day is not so suitable for grain-sowing or for vine-planting, lest by neglecting the proper moment for such operations, the bounty of heaven be lost."

Again, in the same year (321), Constantine declares it most unworthy (*indignissimum*) of this day that it should be taken up with the strifes of the courts and the noxious contentions of suitors (*altercantibus jurgiis et noxiis partium contentionibus*); and that it should rather be filled with good acts (*votiva*). This prohibition of law-suits included arbitrations. (Cod. Theo. II., 8 fr. 1. Ib. XI., 7 fr. 13.)

Under the head of "good acts" are mentioned the emancipation of children from the *patria potestas;* the manumission of slaves, and the visitation of prisoners to see that they were not cruelly treated. (Cod. Just. III., 12 fr. 2. Cod. Theo. II., 8 fr. 1 Ib. IX., 3 fr. 7.)

Later laws made further exceptions to the above. The judges were ordered by Honorius and Theodosius (A. D. 408) to proceed against robbers, and especially against the Isaurian pirates, at all times, not even excepting Easter or Lent; the reason given for this being that otherwise the discovery of crimes expected from the torture of the robbers may be delayed, and the pious hope is expressed that the High God will pardon the act being done on Sunday, because it tends to the safety of the many. (Cod. Just. III., 12 fr. 10.)

There were numerous other exceptions; for those which obtained as against the ante-Christian festivals of Rome, were

held still of force. Their object was to prevent a failure of justice in civil as well as criminal cases. They will be found in Neale's Feasts and Fasts, London, 1845, pp. 6 and 7, and are summed up in the following lines:

" Haec faciunt causas festis tractare diebus
Pax, scoelus admissum, manumissio, res peritura,
Terminus expirans, mora, testis abesse volentis,
Cumque potestatis patriae jus filius exit."

Theodosius (A. D. 386) went further, and extended the prohibition to all business, as well as to litigation. (*Omnium omnino litium et negotiorum quiescat intentio*). (Cod. Theo. XI., 7 fr. 13. Ib. II., 8 fr. 18.)

In the same year he forbade shows on Sunday, "so that divine worship should not be mixed up with the slaughter of animals;" at least so Mr. Neale, l. c., p. 212, translates: "*Divinam venerationem confecta solemnitate confundat.*" (Cod. Theo. XV., 5 fr. 2.)

Valentinian Theodosius and Arcadius (A. D. 392) forbade on Sunday the contests of the circus (*circensium certamina*). Arcadius and Honorius added theatrical games and horse races; and Honorius and Theodosius (A. D. 409), added all pleasures: "*Nullas edi penitus patimur voluptates.*" (Cod. Theo. II., 8 fr. 20, 23, 25).

Leo and Anthemius go more into detail, and so make the prohibition of legal proceedings and of business more sweeping; and add, that in thus ordering a freedom from labor, they do not will that the day be given to "immodest pleasures" (*obscoenis voluptatibus*); and mention specially "*scena theatralis*," "*circense certamen*," and "*ferarum lacrimosa spectacula.*" (Cod. Jus. III., 12, fr. 11). I cannot, by translating these words: "theatrical representations," "games of the circus," and "tearful exhibitions of wild beasts," convey their true meaning to modern minds.

The Roman theatre was very different from the modern. Every citizen of Rome had a right to attend it without

expense. Hence, instead of an audience, few in numbers and of at least some culture, paying for their seats, there were often gathered at a Roman theatre thirty thousand people of the very lowest and most brutal kind. This rabble—not the few—had to be pleased, and, as the result, taste soon degenerated. Purely dramatic representations gave way to clowns, boxers, jugglers, &c.; and "the theatres were soon polluted with the grossest indecencies, and the luxury of the stage, as the Romans delicately phrased it, drew down the loudest indignation of the reformers of a later day." (Merivale, Romans under the Empire, vol. 4, p. 538.)

The contests of the circus were the struggles—to the death oftentimes—of the gladiators. The "tearful spectacles of wild beasts" were not simply fights between the beasts themselves, or their wholesale butchery by hired spearmen, but also fights between men and savage beasts; and yet further, the butchery of helpless men and women, cast bound to the animals to be destroyed by them.

To the early Christians, with the memories of the days of Nero and others still fresh, these spectacles were specially hateful. They well merited the term "*obscoenae voluptates*," and were condemned by the better class of Romans—the mere spectators:—how much more, then, by those whose relatives, friends, leaders, and fellow-religionists, had been compelled to act and suffer in them? (Ib., pp. 538, 545.)

These laws form the basis of the English legislation on this subject, and consequently of ours. They can easily be traced in these.

Like the laws of their day, they deal with the concrete, and do not lay down general rules. But the principle underlying them is easily seen. They forbid all labor and work on Sunday, except such as was essential, or at least highly conducive to the welfare, and hence which, in a broad sense, could be called necessary to the state and its citizens. Hence the farmer could sow his seed and plant his vines equally as the state could pursue robbers and pirates; and to prevent the loss of a

right or the failure of justice the private suitor could take legal proceedings; just as the state could take steps to prevent the escape of criminals.

They prohibited pleasures which it is perhaps too strong a term to call "obscene," but which were to a high degree offensive to the taste and moral sense of the community. But they nowhere prohibited recreation or inoffensive pleasures or social enjoyments, unless indeed the law of Honorius and Theodosius (supra p. 112), severed from its connexion, be held to do this. This law, however, found no place in the Justinian code, and consequently did not last very long.

And it is a little remarkable that modern decisions are drifting from later stringency back to early liberality. The courts being as usual ahead of the legislatures, are making our present laws conform more and more to those from which they spring. But I anticipate.

As it is through England that we have derived our laws on this as on almost all subjects, we turn now to her legislation.

Of the laws before the Norman conquest, the earliest of which I find mention is that of Ina or Ine, King of the West Saxons in the year 692 or 693 (Fuller's Church History, book II., sect. 7, § 106. Johnson's English Canons, Ed. 1850, p. 133). Dr. Hessey gives the date as 673 (Bampton Lectures, 1860. Sunday. Ed. 1866, p. 89) but I fancy this must be a misprint.

Johnson gives this law as follows: "If a slave work on the Sunday by his lord's command, let him become a freeman and let the lord pay thirty shillings for mulct. But if the slave work without his lord's privity, let him forfeit his hide (be scourged) or a ransom for it. If a freeman work without his lord's command, let him forfeit his freedom or sixty shillings. Let a priest be liable in double punishment." Cf. Gibson Codex Juris Ecclesiastici, London, 1713, p. 270.

To a similar effect were the "dooms" (A. D. 696) of Wihtred, King of the Kentish (Johnson, l. c., vol. 1, pp. 146 and 147), and also the laws (A. D. 878) enacted by the convention between Ædward the Elder, and Guthrun the Dane. These

latter, however, went further and ordained that goods set for sale on Sunday should be forfeited. (Johnson, l. c., p. 334.)

Æthelstane, likewise (A. D. 925), forbade "buying and selling on the Lord's day." (Fuller, l. c. II., 10, § 9, Johnson, l. c., p. 344.) In this he is said to have followed the laws of Ælfred (Gibson, l. c., p. 270, note), and was followed by Ædgar, the Peaceful, A. D. 958. (Johnson, l. c., page 410, § 5.)

Ædgar, who, as Fuller has it, was "wholly Dunstanized," forbade further "heathenish songs and diabolical sports," whatever these were, and also markets and county courts. He also fixed the beginning of Sunday at 3 o'clock Saturday afternoon to last "till Monday morning light." (Johnson, l. c., p. 410, § 5 and p. 416, §§ 18 and 19.)

Of this last, Fuller says: "Our women have a proverb. It is a sad burden to carry a dead man's child, and surely a historian hath no much heart to take much pains (which herein are pains indeed) to exemplify dead canons." (Fuller, l. c. II., 10, § 29). So I suppose this extension of Sunday did not last very long.

In fact, however, it was not the king only but the Church and a large part of the laity that was "Dunstanized;" for we find the stringency in the observance of Sunday gradually increasing.

Æthelred (1009), added "hunting bouts" to the prohibited sports, and renewed the interdict as to "trafficking, county courts, and worldly works:" Johnson, l. c. p. 486, § 15. King Cnut—sturdy man as he was—also put hunting (1017), under the ban. He however relaxed the rule as to the courts and allowed them to sit on Sunday "in case of great necessity."

Though aware that the ecclesiastical law of England was, in early days, the law of the realm and was enforced by legal sanction; (Stubbs, Const. Hist. of Eng., vol. i. p. 231;) yet, wishing to confine myself strictly to the civil legislation on this subject, I have not referred to the canons regulating this day. But I will violate this rule in regard to the Council of Clovishoo, A. D. 747, first, because it was held under the presidency of Æthelbald, King of the Mercians, and therefore was not

wholly ecclesiastical, and secondly, because it has been cited, notably by Dr. Hessey (l. c. p. 89), as forbidding travelling on Sunday. Mr. Neale (l. c. pp. 103 and 104), states that this was prohibited to slaves by King Wihtred, at the Council of Berghamstead. I cannot find this prohibition in Johnson (l. c. p. 142), who otherwise gives the canons passed there, and an examination of the canon of Clovis-hoo against travelling as given in Johnson (p. 249, § 14), shows that it was confined to "all abbots and priests, except the cause be invincible." If anything, therefore, this canon, so far as the laymen are concerned, is the other way; for while it ordains that Sunday "be celebrated with all due veneration and wholly separated for divine service," it says nothing about travelling by laymen, and forbids it only to the clergy. *Expressio unius est exclusio alterius*, is an old maxim.

After the Conquest, the tendency to compel greater strictness in the observance of the day continued, but the civil authorities did not interfere, by the passage of any act that I find, till the 28th Edw. III.

William the Conqueror and Henry II. are said to have confirmed the Councils of Tarragona, Tribury, and Erpfurd, and thus made their prohibition of holding courts on Sunday a part of the common law of England (Lord Mansfield in Swann *vs.* Broome, 3 Burr, 1599). According to this distinguished jurist the constitution of Theodosius (*supra*), is also a part of the common law of England. In holding that the courts cannot sit on Sunday, he rests on these alone; without referring to the laws of Ædgar, Æthelred, and Cnut (*supra*). He says that sports &c., were prohibited, by law of parliament, because by common law they were allowable, but "the courts of justice have never been restrained by act of parliament from sitting on Sunday," because there was no necessity for this, as the "canons anciently received, prohibited such sessions." Mr. Neale, on the other hand (l. c. p. 68, note), says that in the time of Edward III. courts were held on Sunday "with little scruple."

"*Non nostrum tantas componere lites*;" only we think it would have been wiser to have let the canons alone, and to have held to Cnut's law, interdicting the holding of courts on Sunday, except "in case of great necessity."

The statute of 28th Edw. III., c. 14 (1354), to which I have referred above, forbade only "the shewing of wools at the staple" (market town). Gibson, l. c., p. 273.

If the state was comparatively quiet and inactive however, the clergy were not. The constitution of Archbishop Islip, 1359, complains bitterly "to our great hearts grief * * * that a detestable, nay damnable perverseness has prevailed as to the observance of Sunday"—that though it is provided, by sanction of law and canon, "that no markets, negotiations, or courts be held on that day, and that people go to church, yet, that men neglect their churches for unlawful meetings, where revels and drunkenness and many other dishonest doings are practised." (2 Johnson, l. c., pp. 417, 418.)

Following this comes 12th Rich. II., c. 6 (1388), forbidding to servants and laborers on Sundays "the playing at tenis or foot ball, and other games called coytes, dice, casting of the stone, railes, and such other importune games;" but, doubtless, with an eye to the good of the state, ordering that they should have "bows and arrows, and use the same the Sundays." (Gibson, l. c., p. 273.) This law was re-enacted, with additional penalties, by 11th Hen. IV., c. 7 (1464). (Ib.)

The statute of 4th Edw. IV., c 7 (1464), forbade cordwainers and cobblers from selling shoes, &c., on Sunday. This, however, was repealed by 14th and 15th Hen. VIII., c. 9 (1523).

The 6th Hen. VI., c. 3 (1428), forbade laborers, engaged by the week, to claim wages for work done on Sunday. (Neale, l. c., p. 122.)

The 27th Hen. VI., c. 5 (1448), "considering the abominable injuries and offences done to Almighty God and his Saints, always aiders and singular assistors in our necessities, because of fairs and markets upon their high and principle feasts,"

forbade the holding of markets and fairs on Sundays except the four Sundays in harvest. (Gibson, l. c., p. 273–274.)

Edward VI. (1546), in his Injunctions, without waiting for a parliament, ordered that Sunday "be wholly given to God, in hearing the word of God read and taught in private and public, prayers, * * * visiting the sick, &c.;" but allowed men in time of harvest to labor on holy and festival days, and save that thing which God hath sent; and adds, that "scrupulosity to abstain from working upon those days, doth grievously offend God." (Fuller, l. c., viii., sect. 1, § 4.)

The parliament of 5th, and 6th Edw. VI., c. 3 (1552), (Gibson, l. c., p. 276) confirmed this with but little change. All persons were ordered to keep Sundays "holy days," and to abstain from lawful bodily labor, but it was allowed "to every husbandman, laborer, fisherman, and to all and every other person and persons, of whatsoever degree or condition he or she may be, upon the holy days aforesaid, in harvest or at any other times in the year, when necessity shall require, to labor, ride, fish, or work any kind of work, at their free will and pleasure."

The harvest time, above referred to, was then, apparently, "compted from the fyrst day of July unto the xxiv day of Septembre," and was not restricted to four weeks (Ib., note m). See Neale, l. c. 61, note p, where the time is given as "from the 30th July until the 15th day after the feast of St. Michael," or to the 14th of October.

By 1st Mary, c. 2, this act was repealed. Queen Elizabeth, who did not suffer her parliament to meddle much with religious matters, re-enjoined its observance; but the act was not revived by parliament till 1st Jac. I., c. 25, when the act of Queen Mary was formally repealed, and this revived.

In 1564 puritanism, which had been at work on the English mind for many years, took definite form, and first assumed its name. (Fuller, l. c., ix., sect. 1, §§ 66 and 67.)

It intensified yet further the severity and strictness of conduct on Sunday; and apparently, about this time, the name of Sabbath was for the first time applied generally to the day.

Fuller mentions as an incident which increased this feeling, an accident which happened in 1583, at a bull baiting on Sunday, viz., the scaffold fell and killed a few people, and injured yet more. (Book ix, sect. 6, § 1.) This together with Dr. Bownd's book (1583) pushed yet further the tendency of the age to gloom and severity. (Fuller, l. c., xi, sect. 8, § 143; Hessey, l. c., 205.)

Queen Elizabeth added to Edward's injunctions, by forbidding inn-holders and all house-keepers, &c., "to sell meat or drink in the time of common prayer." (Gibson, l. c. p. 271, note E.)

This stringency then, as now, produced some reaction. King James I, in one of his progresses through Lancashire, noticed the extreme strictness with which the magistrates compelled the observance of Sunday, and the consequent discontent of the people. Therefore, on 14th of May, 1614, he issued for the people of Lancashire "The Book of Sports," or "Declaration," that his good people, after the end of divine service, "should not be disturbed, letted, or discouraged from any lawful recreations: such as dancing either of men or women, archery for men, leaping, vaulting, or any such harmless recreations; nor from having of May games, Whitsunales, or Morris dances, and setting up of May poles, or other sports therewith used, * * * withal prohibiting all unlawful games to be used on Sundays only, as bear baiting, bull baiting, interludes, and at all times, in the meaner sort of people by law prohibited, bowling." (Fuller, l. c. X, sect. 4, §§ 55 and 56.)

This king, who "never said a foolish thing and never did a wise one," well illustrated this unhappy faculty in this declaration.

The preamble deserves to be set out in full: "With our own ears," says the king, "we have heard the complaints of our people, that they were barred from all lawful recreation and exercise upon the Sunday's afternoon, after the ending of all divine service, which cannot but produce two evils. The one hindering the conversion of many, whom their priests will take occasion thereby to vex, persuading them that no honest

mirth or recreation is lawful or tolerable in our religion; which cannot but breed a great discontentment in our people's hearts, especially of such as are peradventure upon the point of turning. The other inconvenience is this, that this prohibition barreth the meaner and commoner sort of people from using such exercises as may make their bodies more able for war, when we or our successors shall have occasion to use them; and in place thereof sets up filthy tipplings and drunkenness, and breeds a number of idle and discontented speeches in their ale houses. For when shall the common people have leave to exercise, if not upon the Sundays and holydays, seeing they must apply to their labour, and win their living in all working days."

But instead of doing a wise thing, and extending this privilege to all classes, he expressly refused "this benefit and liberty to known recusants" (so-called papists), and to the puritans. This incensed these beyond measure. (Neal's History of the Puritans, vol. 2, p. 115.) The calvinistic Archbishop Abbot forbade the reading of this declaration (as required by it) at Croydon Church. The Lord Mayor of London stopped the king's carriage when passing through London on Sunday. (Neales Feasts and Fasts, p. 228.) Puritanism was still in the ascendant, and the "Book of Sports" apparently fell a dead letter. It was not extended by this king beyond Lancashire, and the observance of Sunday under the influence of the calvinistic archbishop remained generally as strict as ever.

In the first year of Charles I the parliament, which he had hastened to call, passed an act (1 Car. I. c. I.) "for the strict observance of Sunday, which the puritans, who controlled the parliament, affected to call the Sabbath, and which they sanctified by the most melancholy indolence." (Hume, Vol. II, p. 252.)

With that positive knowledge of God's will which has always characterized certain classes of Christians, they assert dogmatically "that the holy keeping of the Lord's day is a principal part of the true service of God," than which service there is nothing more acceptable to him, and then enact that "there

shall be no meetings, assemblies, or concourse of people out of their own parishes on the Lord's day * * * for any sports and pastimes whatsoever; nor any bear baiting, bull baiting, interludes, common plays, or other unlawful exercises and pastimes be used by any person or persons within their own parishes." The penalty was a fine of three shillings and four pence; and in default of payment the offender "should sit in the stocks for the space of three hours." (Gibson, l. c. p. 267–268.)

The broader and more catholic spirit of Laud, then Bishop of London, apparently modified the strictness with which those laws were enforced. Upon the death of Abbot, in 1633, he succeeded to the archbishopric, and with the greater power he thus obtained, he secured a greater indulgence to sports and pastimes. By his influence, as it was afterwards charged, though apparently not proved, Charles republished his father's Book of Sports on the 13th October, 1633, and extended its provisions to the whole realm.

This was sorely distasteful to the puritan clergy, and they avoided reading the "Book" in the churches as far as they could, or, on reading it, would follow it by the fourth commandment, or by a sermon against it. Charles was, however, apparently more firm than his father, and the book was not altogether a dead letter. (2 Neal's History, &c., 239 and 243.) Later it was, by order of the Long Parliament, burnt by the common hangman.

In the third year of Charles (to go back a little) we find another law of parliament (3 Car. I, c. 1, 1627), which enacts that no carriers with any horse, nor wagon men with any wagon, nor cart-men with any cart, nor wain-men with any wains, nor drover with any cattle, * * * by themselves or any other, shall * * * travel on Sunday, nor shall any butcher, by himself or through any person, "kill or sell any victual" on the said day (Gibson, l. c., 269).

This brings us to the act which, with that of Charles I. just cited, is of most interest and importance to us Americans, viz.,

the Act of 29th Car. II, c. 7, 1676. It was of force at the Revolution, and gave more or less color to the laws of the colonies and of the states which succeeded them.

For "the better observation and keeping holy the Lord's day, commonly called Sunday," it enacts

(1). That previous laws in force concerning the observation of the Lord's day, and repairing to church thereon, be carefully put in execution.

(2). That all persons shall apply themselves to such observation by exercising themselves thereon in the duties of piety and true religion publicly and privately.

(3). That no tradesman, artificer, workman, laborer, or other person whatsoever, "shall do any worldly labor, business, or work of their ordinary callings" on that day (works of necessity and charity only excepted)." Children under fourteen years of age were excepted from the operation of this section.

(4). That no person shall publicly cry, show forth, or expose for sale any wares, merchandizes, fruit, herbs, goods, or chattels whatsoever, upon pain of forfeiture of the goods.

(5). That no drover, horse courser, wagoner, butcher, higler, or their servants, shall travel or come to his or their inn or lodging.

(6). That no person shall "use, employ, or travel * * * with any boat, wherry, lighter, or barge, except on some extraordinary occasion, to be allowed by some magistrate."

(7). If any person travelling on Sunday shall be robbed, the Hundred was relieved from the responsibility therefor, but must still make pursuit of the robber.

(8). It made void the service of all writs and other legal process on Sunday, except in cases of treason, felony, and breach of the peace.

(9). That this act should not apply to the prohibiting of dressing of meats in families, or dressing or selling of meats in inns, cook-shops, or victualling houses, for such as otherwise

cannot be provided, "nor to the crying and selling of milk before nine in the morning, or after four in the afternoon." (Gibson l. c., pp. 270 & 272.)

By 5th and 6th W. & M., c. 22 (1693), this statute was partially relaxed as to hacks, and by the 9 Ann ec. — (1710), all hackney coachmen were allowed to ply their business on Sunday without restraint; and by 11th & 12th Will. III., c. 21 (1699), similar relief was granted to watermen plying between Vaux Hall, above London Bridge, and Lime-house, below the same. (Gibson l. c., 272.)

This ends my review of the English statutes on this subject.

The later acts do not concern this country. Doubtless I have omitted some that I should have noticed, for the means of research at my hands are meagre. Still the above give, I hope, the most material regulations for the observance of Sunday at that time. And in them we note the gradual intensification of the gloom and strictness with which the day was surrounded.

First, ordinary work is forbidden. Then follows the selling of goods. Then the joyous and rollicking festivities of fairs and markets. Then come games and sports, and thus gradually Sunday is filled with unhappy associations. That bull-baiting, bear-baiting, and such like cruel sports should have been interdicted on the day of rest—the day of peace—seems natural to us; but it will be difficult to assign any religious reason for the prohibition of quoits, foot-ball, &c., while the use of bows and arrows was encouraged. The reason implied in the Book of Sports was doubtless the true one. The English archer made the English infantry of that day peculiarly formidable. The peasants supplied the archers. Cut off from all other amusements on their day of leisure, they were almost compelled to become proficient in archery, and to form a corps of skilled reserves, from which the army could always be recruited.

These laws of England, however, did not suit many of the puritans of that day. They were too moderate for the followers of Dr. Bownd, and these preferred to exchange their old

homes for a wild and unknown land, rather than not to have their own laws, and to follow religion according to their own views. These men were too much in earnest in their convictions to brook any half-way observance of Sunday, and their influence in this matter is felt among us yet.

Massachusetts, the first of our puritan colonies, both in importance and time, gives a good example of this, and it will not be time lost to refer very briefly, not only to the laws actually of force in her colonial days, but also to those proposed by Mr. Cotton, and which are said to have formed the basis of her subsequent legislation.

By it the theocratic theory was carried to an extreme. The fundamental idea was that "these plantations and the churches and commonwealth are complanted together in holy covenant and fellowship with God in Jesus Christ," and "the laws of judgment delivered from God by Moses to the commonwealth of Israel so far forth as they are moral (are declared) of perpetual and universal equity among all nations such as these plantations." Among the powers and duties of the civil magistracy is to "preserve religion." The "profaining the Lord's day with careless or scornful neglect or contempt thereof," it was urged should be punishable with death. (Collection of original papers relative to the history of the colony of Massachusetts Bay, Boston, New England, 1769, pp. 162–173.)

The laws actually passed did not go so far. But they went far enough. Any one who absented himself from church meetings was liable to a fine or imprisonment. (Ib., pp. 215 and 485.) Idolatry, witchcraft, and blasphemy were punished with death, &c., &c. Prov. Laws of Mass., ed. 1869, p. 55. For the first time (1692) travelling, simply as travelling, and swimming and "unnecessary and unreasonable walking in the streets and fields," were forbidden. (Prov. Law, 58 and 68. See on this subject an able and interesting discussion of the matter by Gray, J., in Hamilton *vs.* Boston, 14 Allen, 478.)

We now turn to the present laws of our states.

As all the states except works of necessity and charity in their general prohibition of work and labor; and as they all forbid judicial proceedings and the service of process, civil and criminal, except in cases of treason, felony, and breach of the peace; I shall not mention these again unless there is something special in the particular state.

Massachusetts forbids, under a fine of $50, the keeping open of shops, warehouses, &c., the doing of any labor or work, the attendance at any dancing place, public diversion, show, or entertainment. Furthermore, under a fine of $10, all sports, games or plays, using fire arms in sport or after game, fishing and travelling, but the prohibition of travelling shall not be pleaded by any common carrier of passengers as a defence to an action for loss, or damages for injury to the traveller.

Keepers of places of public entertainment &c., can entertain only travellers or lodgers, and shall not suffer other persons to remain on their premises, or grounds, or fields, drinking or spending their time idly or at play or doing secular business, under a fine, on first conviction, of $50 for each person being there illegally, and on second conviction under a fine of $100, and if convicted a third time they are made forever incapable of holding a license; nor can they, under a fine not exceeding $5, allow such persons to spend their time there drinking on Saturday evening, nor can they keep for hire implements used in gaming, and suffer them to be so used on Sunday, under a fine not exceeding $100, or imprisonment not exceeding 3 days for the first offence, and for the second and future offences, imprisonment not exceeding one year. In both cases to enter into recognizances for good behaviour.

Whoever attends any game, sport, play, or public diversion, except a concert of sacred music, upon Sunday evening or even on Saturday evening, unless on this last day such sport &c., is specially licensed, are subject to a fine of $5.

Those conscientiously believing that Saturday should be observed as the sabbath, and abstaining from secular business

on that day, are exempt from the above so far as labor is concerned.

Rhode Island forbids, under a penalty of $5 for the first offence, and $10 for the second offence and all subsequent offences, all labor &c., in one's ordinary calling, and also all games, sports, play, or recreation, or the suffering of either of the above by servants or children.

Connecticut forbids, under a penalty of $1 to $4, travel, secular business or labor, the keeping open of shops &c., the exposure for sale of any property, and "any sport or recreation," between sunrise and sunset; all concerts, dancing, or other public diversion.

Furthermore, from 12 o'clock Saturday night, to 12 o'clock Sunday night, no place where it is reputed that intoxicating liquors are sold, or sports, or games of chance are carried on, can be opened under a penalty of $40.

No proprietor or drivers of any vehicle, not carrying the mail, can allow any one to travel therein, under a fine of $20.

No person who believes that Saturday should be observed as the sabbath, and who abstains from secular business on that day, is liable to prosecution for doing secular business or labor on that day (Sunday), provided he disturbs no one attending public worship.

Vermont ordains positively that Sunday shall be kept as a sabbath, holy-day, or day of rest from all secular labor, recreation, and employment, from twelve o'clock on Saturday night to sunset on Sunday. The penalty for violation is $2.

Under a like penalty, and within a like time, no one can be present at any public assembly, except such as shall be held for the purpose of social and religious worship and moral instruction, nor except from motives of humanity or charity or for moral or religious edification, visit from house to house, nor travel from midnight of Saturday to midnight of Sunday, nor hold or attend any ball or dance, use any game, sport, or play, or resort to any house of entertainment for amusement or recreation.

This state has the constitutional provision incorporated in the article on religious freedom, that every denomination of Christians should observe the sabbath or Lord's day, and keep up such sort of religious worship, as to it seems agreeable to the "revealed will of God."

I am informed, that of the above, only those provisions which enforce abstinence from secular labor, recreation, and employment have ever been enforced. The other provisions are "virtually obsolete."

New Hampshire forbids, under a penalty of $6, work, business, &c. of one's secular calling "to the disturbance of others"; also plays, games, or recreations; also opening of shops for the sale of merchandise.

In this state travelling on Sunday to make social visits is not prohibited, though contracts, including negotiable notes, made on Sunday are void. Wills made on Sunday are valid.

Maine declares deeds, contracts, receipts, or other instruments in writing void if dated on Sunday, without further proof of their being then made and delivered; and forbids, under a penalty not exceeding $10, the keeping open of shops, &c., and any other place of business; travelling, all work, sports, games, recreation; the being present at dances, public diversion, or shows, &c., or encouraging the same.

Innkeepers are forbidden, under a fine not exceeding $4 for each person, to suffer any person, except travellers, strangers, or lodgers, to abide in their houses, yards, or fields drinking or spending their time idly at play, or doing secular business. If the offence is repeated the limit of the fine is increased to $10, and for a third offence, he becomes incapable of holding a license. Persons so abiding in the inn, &c., are subject to a fine not exceeding $4.

Those believing that Saturday should be observed as the sabbath, and abstaining from secular business, &c. on that day, are exempt from this act, so far as labor is concerned, provided they do not disturb others.

Formerly for purpose of business, Sunday began by law on midnight Saturday, and closed at sunset on Sunday: consequently contracts on Sunday were valid, as they were presumed to have been executed after sunset. By the act of 1864 this was changed, and Sunday now lasts the usual twenty-four hours, —from midnight to midnight.

New York forbids hunting, shooting, fishing, sporting, playing, horse-racing, gaming; frequenting tippling houses, or any unlawful sports or pastimes; travelling, except in going to and returning from a church within twenty miles, and except going to some place expressly by the order of some public officer, and except in removing one's family or furniture, when such removal was begun on some other day; also servile labor or working, except by those who conscientiously and actually observe Saturday as the sabbath, and labor and work then only in such a way as not to disturb other persons in their observance of the day. This clause applies only to persons over fourteen years of age, and the penalty is $1 for all except shooting, which is from $10 to $25.

Also, it forbids by the penalty of the forfeiture of the things exposed, the exposure for sale of wares, goods or chattels, except meats, milk, and fish, before 9 o'clock, A. M.

Keepers of inns, &c., ale-houses and groceries, and persons authorized to sell spirituous liquors of any kind, &c., are forbidden to sell or dispose of such, except to lodgers, or to persons actually travelling, as allowed by law. The penalty for this is $2.50.

All processions, except funeral processions engaged in the actual burial of the dead, and except those to and from a place of religious worship in connexion with a religious service there celebrated, are forbidden, and in these excepted cases there can be no music, fireworks, discharge of cannon or firearms; except in military funerals, there may be music, but it cannot be played within one block of a place of worship. The penalty for each person violating this section is a fine not over $20, or imprisonment not over ten days, or both.

All interludes, tragedies, comedies, operas, ballets, plays, farces, negro-minstrelsy, negro or other dancing, or any other entertainment of the stage, or any circus, dramatic performance, jugglers, acrobats, or rope-dancing, are also forbidden; and whoever offends against this section, or aids in such offence by advertising them, or by letting any place, whether buildings or gardens, &c., for the exhibition of them, is guilty of a misdemeanor, and, in addition to the penalty therefor, is subject to a fine of $500. The Society for the Reformation of Juvenile Delinquents is authorized in the name of the people to prosecute any such offender (principal or aider), and recover the penalties to their own use. Managers of theatres, &c., offending as above, forfeit also their license.

New Jersey's Sunday laws are contained in her act for the suppression of vice and immorality. They forbid, under a fine of $1, travelling, business, work, shooting, fishing (otherwise than with a seine, the fine for which is $14), sporting, gaming, racing, frequenting tippling houses, interludes, plays, dancing, singing, fiddling, or other music for merriment, playing at foot-ball, fives, nine-pins, bowls, long-bullets, quoits, or any other kind of playing, sports, pastimes, or diversions. Also, under a fine of $2, the exposure for sale or the sale of any wares, merchandize, fruits, herbs, meat, fish, goods, or other chattels. If these fines are not paid, the offender is committed to jail for not more than ten days; and a constable or any other citizen may arrest any one found on Sunday fishing, sporting, gunning, travelling, or going to or returning from any market or landing with carts, wagons, or sleds, or behaving in a disorderly manner; and detain him till the next day, to be dealt with according to law.

Those attending a church within twenty miles, or going to call a physician, surgeon, or midwife, or carrying the mail, or "going express" by order of any public officer, or dressing victuals, are exempt from the above. Railroad companies may run one passenger train. (Are not all of these, excepting the religious duty of attending church, works of necessity?)

The effect of this statute has been to hold void any transaction which, if performed on any day but Sunday, could be enforced.

Driving of stages, except to carry the mail, is also specially forbidden, under a penalty of $8, recoverable as above. Justices of the peace are required to stop and detain such stages until the next day.

Wagoners, carters, drovers, and butchers cannot ply their trade, under a fine of $2; and the transportation of freight, except milk, by railways, canals, &c., is prohibited.

The disturbance on Sunday of any assembly for the purpose of religious worship, is forbidden, under a fine of $10, and in default of payment, under imprisonment for ten days; and any constable or member of such assembly may arrest the offender, and detain him until the next day, to be dealt with according to law.

All persons conscientiously observing Saturday as the sabbath, and abstaining from work on that day, are exempt from the above laws, so far as labor is concerned: provided their labor be performed on their own premises, and so as not to disturb other persons in the observance of the day; and does not embrace selling of goods, &c. Such persons are relieved from answering to any process except in criminal cases, and from militia duty, and from the duties of any office they may hold except when the interest of the state absolutely requires it.

Pennsylvania forbids all worldly labour, &c, all "unlawful" games, hunting, shooting, sport, or diversion whatsoever, under a penalty of $4. This does not hinder watermen from landing their passengers, or ferrymen from carrying over the water travellers.

Drinking and tippling in ale houses, taverns, or other public places are also forbidden, under a penalty of one shilling and six pence. Persons ordered to disperse by the proper authorities, and not doing so, are to be brought before a justice of the peace, and he may commit them to the stocks or bind them to good behavior. The stocks, we presume, are unheard of. Victual-

ling houses can supply to travellers, their inmates, and lodgers, victuals and drink in moderation. This latter liberality should atone for the stocks.

No trading in liquors is permissible, under a penalty of $50, and further, the seller is declared guilty of a misdemeanor, and liable to a fine not less than $10, nor more than $100, and be imprisoned for not less than ten, nor more than sixty days.

Ohio forbids the selling and bartering of spirituous liquors on Sunday, under a penalty of not more than $5. Also by persons over fourteen years of age, under a fine of not more than $20, or imprisonment not more than twenty days, or both, sporting, rioting, quarrelling, hunting, fishing or shooting: and under a penalty of not more than $5, common labor. Watermen are allowed to land passengers; superintendents or keepers of toll-gates to attend to the same, and ferrymen to convey passengers over waters; families emigrating can travel.

Indiana forbids, under a penalty of from $1 to $10, rioting, hunting, fishing, quarrelling, common labor, or engaging in one's usual avocation. This act does not apply to those conscientiously observing the seventh day as the sabbath, travellers, families removing, and keepers of toll-bridges and toll-gates, and ferrymen.

A recent decision in this state holds that the selling of a cigar to one who has contracted the habit of smoking is a work of necessity. "There is no difference legally between the act of selling a cigar under such circumstances and the act of furnishing a cup of tea or coffee, a meal of victuals, or supplying any daily want to a customer for pay." Carver *vs.* The State. Ms.

This decision will be received by a host of people as good sense, and it will be difficult to say that it is not also good law.

Illinois forbids under a fine of $200 the keeping open of places where liquor is sold or given away, or the selling of liquors. Also, under a fine of $25, the disturbance of the good order of society by labor or by amusements of any kind; this, however, not to prevent railroad companies from discharging

passengers, nor watermen and ferrymen from the discharge of their usual duties. Also, under a like fine, the disturbance of any private family.

Civil process cannot be served nor attachment issued, nor an injunction granted except in cases of necessity, made apparent by affidavit.

Persons observing conscientiously any other day as the sabbath, and abstaining from secular work thereon, are exempt from the operations of this law, so far as work is concerned.

Iowa forbids under a penalty of not more than $5 nor less than $1, rioting, fighting, offering to fight, hunting, shooting, carrying fire arms, fishing and shooting, horse racing, dancing, or in any manner disturbing any assembly or private family at worship, any buying or selling, or any labor.

It excepts from the above all who conscientiously observe Saturday as the sabbath, so far as labor is concerned, and specially permits travelling; and families emigrating to pursue their journey; and ferrymen, the keepers of toll-bridges and toll-gates to attend to their business.

This state regulates with minuteness what legal proceedings can be had on Sunday. They are generally prohibited in civil cases, and the exceptions are such as prevent a failure of justice and such matters of necessity, as instructing juries, deliberating on the case, receiving verdicts, &c.

Michigan forbids the keeping open of shops, &c.; all business or work; the attendance at any dancing, public diversion, show, or entertainment; or any sport, game, or play.

Promises of marriage and the solemnization of marriage are specially excepted from the above; but whether they are deemed labor, or sports, or games, the law does not declare.

Keepers of public houses are not to entertain any persons except travellers, strangers, or lodgers; nor to suffer any other to remain or about their premises, engaged in drinking, idleness, play, or any secular business.

Attendance at meetings for religious worship or moral instruction, or at concerts of sacred music, are specially permitted on Sunday evening.

Persons conscientiously believing that Saturday should be observed as the sabbath, and refraining from labor, &c., on that day, are exempted from the penalties imposed for secular labor: provided, they disturb no other person.

The penalties for the violation of the above vary from $5 to $10.

Persons who, on Sunday, by rude and indecent behavior, or in any other way, intentionally interrupt or disturb any assembly met to worship God, are punished by a fine from $2 to $50, or by imprisonment not over thirty days. Judicial proceedings, except to instruct a jury, or to receive its verdict, or to discharge it, and the other usual exceptions, are forbidden.

Wisconsin forbids by a fine of from $5 to $25 the sale or other disposition of liquors, &c. Also, by a fine not over $10 the keeping shops open, the selling of goods, &c.; all labor and work; the being present at dancing, public diversion, &c.; the taking part in any sport, game, or play.

Judicial proceedings, except in cases of "exigency" and "by the direction of the court," are forbidden.

Any person believing Saturday or any other day to be the sabbath, and actually refraining from labor on that day, may work on Sunday, but in such a way as not wilfully to disturb some other person or a religious assembly.

Minnesota forbids by a fine not exceeding $2 the keeping open of shops and other places of business; all labor, &c.; the being present at any dancing, public diversion, show, &c.; the taking part in any game, sport, or play. This, however, so far as labor is concerned, does not apply to those believing that Saturday is the sabbath, and abstaining from labor on that day.

Judicial proceedings, except to receive a verdict, discharge a jury, or so far as they are necessary for the preservation of the peace, the sanctity of the day and arresting offenders, are forbidden.

Delaware forbids, under a fine of four dollars and imprisonment of not more than twenty-four hours on failure to pay the fine, all worldly employment, labor, or business. All travelling in pursuance of one's usual calling, and exposure for sale and the sale of goods, &c., are forbidden, under a fine of eight dollars; and in case of failure to pay, imprisonment for twenty-four hours; and any justice of the peace may stop any one travelling as above.

Fishing, fowling, horse-racing, cock-fighting, and assemblies for the purpose of gaming, playing, or dancing, are prohibited by the same penalties as worldly employment.

No person licensed to sell liquors can sell or give them away on Sunday, under a fine of from fifty to one hundred dollars on the first conviction; and on the second conviction he forfeits his license, and becomes incapable of receiving another for the space of two years.

Maryland forbids, under a fine of five dollars, work and bodily labor; and also, the indulging or the suffering children or servants to indulge in fishing, gaming, &c., or unlawful pastime, or recreation.

Also, the selling or bartering, or if a dealer, the giving away of tobacco, segars, &c., or other goods or wares. The penalty is, on the first conviction, a fine of twenty to fifty dollars; on the second conviction, from fifty to five hundred dollars, imprisonment from ten to thirty days, and forfeiture of license for twelve months; and upon the third conviction, a fine from one hundred to one thousand dollars, imprisonment from thirty to sixty days, and forfeiture of license for two years.

No dance or opera-house, ten-pin alley, ball or barter saloon is permitted to be kept open on pain of a fine from fifty to one hundred dollars on first conviction; and of one hundred to five hundred dollars, and imprisonment for ten to thirty days on second conviction.

The District of Columbia forbids, under a fine of one to five dollars, the sale of any articles except newspapers, and those only to one o'clock, P. M., and under a penalty of from twenty to

forty dollars the keeping open any place of business for the sale of any articles save drugs, coffins, and other matters of necessity. Barbers are allowed to keep open till one, P. M.; hackney coaches are specially forbidden from occupying public stands, except railroad depots and steamboat landings; and no one is allowed to wash any vehicle in the street.

Keepers of hotels and of tippling-houses must close their bars on Sunday, and must not sell liquor, the penalty varying, on first conviction from twenty to fifty dollars for the hotel-keeper, and from twenty to forty dollars for the other.

The usual law against work and labor is said to be obsolete; the penalty is two hundred pounds of tobacco. The same is said of the law against any house-keeper allowing drunkenness, gaming, or unlawful sports in his or her house on Sunday; the penalty for which is two thousand pounds of tobacco. But there are, I am told, no decisions on these points.

Virginia forbids, under a penalty of $2, labor at any trade or calling by one's self, or one's apprentices or servants, except the carrying of passengers and their luggage.

Persons conscientiously observing Saturday as the sabbath, and abstaining from secular labor on that day, are exempt from the provision of this law, so far as they themselves, and their servants and apprentices &c., of like belief are concerned, and provided they do not disturb any other person.

Drinking shops are closed from 12 o'clock, Saturday night, till sunrise on Monday morning, and any one selling liquor within that period is subject to a fine of from $10 to $500, and at the discretion of the court to a forfeiture of his license. Cities of over 10,000 inhabitants can regulate this however for themselves.

No one, under a fine of $20, is allowed to carry any pistol, bowie knife, dagger, or other dangerous weapon, to any place of worship during service there, nor, " without good and sufficient cause therefor," to carry such weapons any where on Sunday. If the above offence is committed at such place of

worship, the offender may be arrested, without a warrant, by any conservator of the peace, and held till a warrant can be obtained, not exceeding three hours.

Kentucky forbids, under a fine of from $2 to $50, all worldly labor, or the employment of servants &c., in the same, and under a fine of from $5 to $50, hunting and gaming with a gun.

These are the only sports pastimes or recreations forbidden in this state. Yet I understand the day has been, and is, as a voluntary matter, very generally observed, except by liquor dealers; and these are now compelled to do the same. They are forbidden to keep their shops open, or to sell or otherwise dispose of liquors, under a like penalty as above, except that for the third offence they forfeit their license.

Tennessee forbids, under a fine of $3, all persons from doing, or permitting to be done by their children or servants, any of the common avocations of life, and from hunting, fishing, or playing at any game or sport, and from getting drunk.

Missouri. Any one who shall labor himself, or compel or permit those in his control to labor or do any work, or who shall hunt game or shoot on Sunday, is declared guilty of a misdemeanor, and fined not exceeding $50. Members of religious societies, observing some other day than Sunday as the sabbath, and ferrymen, are exempt from the operations of the above so far as work is concerned.

Horse-racing, cock-fighting, and playing at cards or games of any kind, and also keeping open places for sale of liquors, and selling liquors, or goods and wares, except medicines, provisions, or articles of immediate necessity, are also forbidden, under a penalty of not over $50.

Civil process cannot be served on Sunday, except in some cases of necessity, specially designated.

The decisions in this state construe these laws strictly, and tend therefore to limit their effect. There is, however, a remarkable case in this state which strongly illustrates the ill-working of these laws.

In State *vs.* Green, 37 Mo., 466, the judge's charge lasted ten minutes after midnight on Saturday. The court then adjourned till 2 P. M. on Sunday, when the verdict was received and the jury discharged. The prisoner was indicted for murder and convicted. He appealed. The supreme court ordered a new trial; holding that from 12 o'clock, Saturday night, to 12 o'clock, on Sunday night, the court could transact no business except to receive a verdict or discharge a jury.

The court says: "We have felt some hesitation about reversing a conviction otherwise legal, on so small a matter as 10 minutes. The maxim '*de minimis non curat lex*,' cannot be applied to such a case. The rule must be defined, and the line must be drawn somewhere."

Kansas forbids, under a fine of not more than $25, persons either to labor themselves, or compel their employees to labor or work. From this are excepted ferrymen, so far as crossing passengers are concerned, and those who are members of a religious society which observes some other day of the week as a sabbath.

Also, under a fine not exceeding $50, horse-racing, cock-fighting, playing at cards, or games of any kind.

Also, under a like fine, the exposure for sale, or the sale of goods, &c., including groceries. This does not apply to drugs and medicines.

Also, under a fine of from $25 to $100, or imprisonment of from ten to thirty days, or both, and together with the above, forfeiture of license and inability to obtain a new license for two years, the keeping open ale and porter houses, tippling shops, or selling liquors.

Nebraska forbids, under a fine not exceeding $20, or imprisonment not exceeding twenty days, or both, sporting, rioting, quarrelling, hunting, fishing, or shooting; and under a fine of from $1 to $5, common labor. Children under fourteen years of age; those conscientiously observing Saturday as the sabbath, so far as labor is concerned; keepers of toll-bridges and

toll-gates and ferrymen, so far as their business is concerned; are excepted from the above provisions. Railway companies can run necessary trains, and families emigrating can travel.

Juries deliberating on their verdict may receive instructions; their verdicts may be received, and they discharged, on Sundays.

Cities are furthermore specially authorized to restrain the desecration of Sunday.

North Carolina forbids, under fine not exceeding $50, hunting with dogs, or the being off one's premises with a shot gun, rifle, or pistol. Tradesmen, artificers, planters, laborers, and other persons over fourteen years old, are forbidden, under a fine of $1, to do or exercise any labor, business, or work of their ordinary calling; nor are they allowed to employ themselves in hunting, fishing, or fowling; or to use any game, sport or play.

South Carolina. The act in this state dates from 1712, and is very much of a hotch-potch of the English statutes, 1 Eliz. c. 2, 1 Car. 1 c. 1, and 29 Car. 11, c. 7.

It forbids, under a fine of $1, tradesmen, artificers, laborers, or other persons from doing any "wordly labor," masters, mistresses, or overseers from causing or encouraging servants to work. Persons under fifteen years of age are excepted.

Also, under pain of forfeiture of the goods, &c., the public outcry or exposure for sale of any wares, merchandize, fruit, herbs, or chattels.

Also, under a fine of $1, public sports or pastimes, as bear-baiting, bull-baiting, foot-ball playing, horse-racing, interludes or common plays, or sports or pleasures.

Also, but under no penalty whatsoever, travelling by land or water by drovers, waggoners, butchers, higglers, or any of their servants, or any other traveller or person, except to go to church and return again, to visit the sick, or in case of having been belated the night before, and then only to some convenient inn or place of shelter, or upon some extraordinary occasion certified and permitted by some trial justice.

Also, under a fine of $1 from the innkeeper, and $1 from each person found drinking, it is forbidden to vintners, innkeepers, &c. to entertain or suffer persons, except strangers and lodgers in the house, to be in their houses or adjacent grounds drinking or idly spending their time.

And finally it orders all persons "to apply themselves to the observation (of the day), by exercising themselves thereon in the duties of piety and true religion, publicly and privately, and having no reasonable or lawful excuse on every Lord's day, to resort to some meeting or assembly tolerated and allowed by the laws of the state."

The absurdity of the law in this country and in this day, is relieved by the absurd harmlessness of the penalties.

No one that I have met recalls any prosecution under this act, and from one only have I heard the dim tradition of an old Scotch-Presbyterian justice of the quorum, who, near a century ago, did stop travellers. The law, in fact, was generally deemed obsolete, and the state has to thank the ignorant legislature of 1872 for its reappearance on the statute book. Doubtless that legislature thought by its excessive strictness in outward observances to compound for its excessive laxness in all points of morality.

In 1879, the legislature passed an act forbidding railroad companies, under a fine of $500, "to load or run any train on Sunday, except such as carry the mail." But I doubt if this has reduced the number of trains on any road.

Georgia forbids labor and work, keeping open of tippling houses and hunting on Sunday. The violation is made a misdemeanor, and punishable as any other misdemeanor is, viz., by a fine not over $1,000, or by imprisonment not more than six months, or by work in the chain gang not over twelve months. These penalties show clearly that the law is not enforced.

Freight trains and bathing in view of a road leading to a church are forbidden.

Florida forbids, under a fine of $10, the employment of any apprentice or servant in labor or business, and under a fine of $20, the opening of any store or the selling of any wares, merchandise, goods, or chattels, and under a fine of $5 to $25, or imprisonment not over twenty days, the use of firearms, by hunting game or firing at targets.

This state permits the service of all judicial proceedings, provided two "respectable" persons make oath before a justice of the peace, that the person upon whom such proceeding is to be served intends to withdraw himself from the state under the cover of the protection of Sunday. Otherwise the usual prohibition of these proceedings exists with the usual exceptions. The justice of the peace should furnish the sheriff with a certificate that the above oaths have been made.

Alabama forbids, by a fine of from $10 to $20 for the first offence, and for the second offence, of from $20 to $100, and at the discretion of the judge, imprisonment in a jail or at hard labor for the county for not over three months, the compulsion of a child, servant, or apprentice, to labor. Also shooting, hunting, gaming, horse-racing, card-playing; also the keeping of stores, &c., open by merchants or shopkeepers; also the opening of any market or stall therein.

All contracts made on Sunday are declared void, and judicial proceedings are prohibited, except in matters of necessity.

Railroads, stages, steamers, ships, and manufactories requiring to be kept in constant operation, are excepted.

Mississippi forbids, under a fine of not over $20, labor by one's self or one's employee or child; also the keeping open of shops; also hunting with guns or dogs or fishing; also under a fine of not over $50, all theatrical plays, games, tricks, juggling, &c., feats of dexterity, &c., bull-baiting, bear-baiting, horse-racing, cock-fighting, &c.

Louisiana declares Sunday to be a day of rest, and forbids judicial proceedings on that day. The observance is not otherwise regulated by statute, this being left to each incorporated town as a matter of police regulation.

Texas forbids, by a fine of from $10 to $50, compulsory work and labor by employees.

Public carriers, hotels, sugar mills, &c.; and those who conscientiously believe in some other day as the sabbath and refrain from labor on that day, are excepted from the provisions of this section.

Also horse-racing, ten-pin alleys, &c., are forbidden by a fine of from $25 to $50; also the selling or exposing for sale of goods, &c., except provisions, before 9 A. M., under a penalty of from $20 to $50.

Arkansas forbids, by a fine of $1 for each separate offence, labor by oneself or through an apprentice or servant; but this does not apply to steamboats and other vessels, nor to factories which require to be kept in perpetual operation; nor to those who conscientiously and actually observe some other day as the sabbath, and only with employees of their own faith.

Also, by a fine of $10 to $20, the keeping open any store or the selling of any goods, or the keeping open any dram shop, or selling any spirits or wine: charity or necessity on the part of the customer justifies the violation of this law.

Also, by a fine from $20 to $100, horse-racing, whether against another horse or against time, cock-fighting; both of these, whether for wagers or mere pastime.

Also, by a fine from $25 to $50, games of brag, bluff, poker, seven-up, three-up, twenty-one, vingtun thirteen cards, the odd trick, forty-five, whist, or any other game of cards known to the laws by any other name, or with any new name, whether played for a wager or for amusement.

(The admirer of the sober game of whist may well be shocked to find it in such company.)

Also, by a fine from $5 to $25, hunting with a gun with intent to kill game, or shooting for amusement. If this offence is committed by a minor under twenty-one years of age with the consent of his parent or guardian, the latter bears the fine.

California declares any one guilty of a misdemeanor who exhibits operas, or exhibits or aids in exhibiting any bull, bear,

or cock-fight, horse-racing, circus; who keeps gambling saloons open, or exhibits or maintains any noisy or barbarous amusements; who keeps any theatre, dance cellar, &c., where liquors are sold or given away; who buys directly or indirectly a ticket, or pays directly or indirectly an admission fee to such places.

Shops, stores, workshops, bar-saloons, and other places of business cannot be opened for purposes of business under a fine of from $5 to $50. But this section does not apply to hotels, boarding-houses, barber shops, baths, markets, restaurants, taverns, livery stables, or retail drug stores, for their legitimate business, nor to any factory which is usually kept in constant operation.

By an act of April, 1880, this State declares any one "engaged in the business of baking" by himself, or his employees, between the hours of six P. M. on Saturday and the same hour on Sunday, guilty of a misdemeanor, and punishable by imprisonment from one to six months, or by a fine from $25 to $200, or both.

The United States relieve the cadets at West Point and the students at the Naval Academy, from their studies on Sunday; and forbid, under a fine of $1,000, distilling between 11 o'clock Saturday night and 1 o'clock Monday morning.

I have now closed the review of the Sunday laws as they come to us. After Lord Mansfield's decision in Swann *vs.* Broome, 3 Bur. 1599, it was not possible to give this without tracing them from their source in the Roman law, through the English law, down to the present day. No one can be more conscious than I, how defective this sketch is. There is nothing new in it, and I know that it is imperfect. But if I have so put together old materials that some one of greater leisure and greater means of research will take them up, and work a reform in the law, I shall be satisfied.

These laws, as a whole, can hardly be said to be in a satisfactory condition. They are not uniform and not logical. If, indeed, the duty lies upon the state, as the laws of South Carolina and the laws of Vermont imply, to inculcate religion

and enforce its observance, then the fines of one dollar or two dollars for the violation of this important duty are ridiculous. But if, on the contrary, as it seems to me, the state cannot interfere in mere matters of conscience, then such laws are worse than ridiculous. They are mischievous: first, because they unjustifiably expose men to the annoyance of prosecution by any fanatic or person wishing to vex them; secondly, because being in antagonism to the spirit of the people, they will be disobeyed with impunity and with the approval of the citizens; and any law thus disobeyed brings with it the habit of disobeying other laws, and must be unfortunate in its results.

Yet very few persons will ask the total abolition of these laws. They should be modified no doubt; but modified neither in a spirit of subserviency to the extremists in the Church, nor to the extremists of the opposite school, who look on the Church simply as the failing representative of a decayed superstition. The state has nothing to do with these questions, but cannot wisely look on the Church other than as a powerful agent for the teaching of morality and for removing ignorance through its schools (both Sunday and secular). The legislation, however, must be guided solely by state policy.

The usual prohibition of worldly labor meets with very general approval. By the man who fortunately combines both wealth and leisure (if such there be), this day of rest may not be appreciated. But to the mechanic, the shop clerk, the professional man; in fact, to the laboring man of all classes, from the commonest drudge to the judge on the bench or the statesman in active life, it is a boon that they will not let go willingly. Hence, as the temptation to make money is always great, the law should prohibit work, and thus restrain the employer and protect the employee.

But desirable as this day of rest is, the state can never permit it to work an injury to itself or its citizens. This must be its limit, therefore, and all works of necessity—as the very name implies—works for the prevention of injury to the state and its citizens; and of charity,—the active promotion of their

welfare,—must be permitted and encouraged. On the contrary, all such works and acts which are so opposed to the prevailing sentiments of the people as to tend to the disturbance of social order, should be suppressed; but none other.

Hence, I see no reason to make special prohibitions about civil or criminal process. They require work on the part of the lawyer instituting them, and on the part of the officer serving them. Therefore, they are included in the prohibition against labor, &c.; and it seems to me still less wise to make the special exceptions of "treason, felony, and breach of the peace."

To check these is clearly a work of necessity to the state, and without doubt, "the High God will pardon" any act done on Sunday for this purpose even though no prisoner is tortured. But these exceptions seem to me too narrow. The greater exceptions provided by some of our states are steps in the right direction, but I think they do not go far enough; and in fact never can go far enough so long as they limit themselves to special exceptions. It is impossible for the human mind to provide for all contingencies; "for to none of us is given the deep mind, prudent, and looking to all sides;" and it therefore seems wiser to follow Cnut's law, viz.: simply to make the exception "of great necessity," and leave to the courts to decide whether, in the case presented, the desired judicial proceeding is a matter of such necessity.

The case provided for in the Roman law, viz.: that a suit may be begun on Sunday if the claim would otherwise be barred by the statute of limitations, and the neglect to institute the suit earlier was excusable, can easily be conceived; and yet, unless the judges resort to the flexibility of the common law, and disregard the statutes, no relief in such case can be given in many of our states.

With such a rule, the judgment of the court in the Missouri case, which I have cited, would probably have been otherwise. If to give a jury such instructions as will enable it to do justice between the state and one of its citizens (the accused), it is

necessary for the judge, instead of concluding his charge abruptly at midnight, to take ten minutes of Sunday morning; the court, if competent to judge of the emergency, would hardly have set aside the conviction.

Equally unwise does it seem to me to prohibit by law all recreations and amusements on this day. It is given to the laboring man as a day of rest, and should not be made one of gloom and melancholy sloth, in which he can do nothing but seclude himself from the world, as it is called, and devote himself to religious worship.

> "We need not bid for cloistered cell,
> Our neighbor and our work farewell,
> Nor strive to wind ourselves too high
> For sinful man beneath the sky."

No moral blame is attached to the city laborer, nor does any harm come to the state, if he goes out in the country with his family for the day; nor *vice versa* to the countryman: and no penalty should be attached by law to this act. Yet the man who does this is, in many states, called a traveller, and notably as in Massachusetts, till her recent act, treated as a quasi outlaw, and deprived in part at least of that protection which the state affords him on other days.

In the matter of amusements, it seems to me that the Roman law gives us the true principle. Such as are so generally offensive to public taste and public feeling (for so I translate *voluptates obscoenae*) that they would be a cause of irritation, and of great discord in the community, should be prohibited; but none others. It may be difficult, it is true, to draw the line exactly between these and harmless amusements. Yet that should not deter legislators from restoring to the people, a part at least of the liberty of which they have deprived them, without a corresponding benefit to the state. I shall not risk the shipwreck of my opinions by running into particulars. But I think, by way of example, that I may say that bull-baiting, cock-fighting, and horse-racing, as generally offensive to the public taste and public sense of morality, should be forbidden.

On the other hand, I think it will be difficult to assign a valid reason why walking in the fields, open air concerts, and excursions for the day into the country, should be put in the same class with those named above—at least, whatever individual preferences may exist, why the state, that has nothing to do with religious questions as such, should put them in the same class.

But of the prohibitions in these laws, that which has the smallest hold upon public opinion is that against travelling—specially when, contrary to the etymology of the word, one who goes out for mere recreation, without any definite purpose of going from one place to another, entirely indifferent as to his destination, so long as he has a certain amount of fresh air and change of scenery, is called a traveller.

As I said previously, the chief use of this prohibition against travelling is to shield municipal and other similar corporations and common carriers from the usual penalties for their neglect of duty. This, however, I do not think, need detain us. Despite of the recent decision in Davis *vs.* City of Sommerville, (Am. Law. Rev., August, 1880,) and despite of the great authority which so justly belongs to the courts of Massachusetts, the days when such defences will shield corporations are numbered. To the uniform decisions of the supreme court of the United States, to the reasoning of such cases as Sutton *vs.* Wauwatosa, 29 Wis., 21, and above all to that intelligent public opinion to which the recent legislative action of Massachusetts has given expression, may safely be left the reversal of such decisions.

But this prohibition, even if robbed of this, its only practical inconvenience, should come off the statute books. As I have shown, it exists only in the United States, and is the offspring of the puritan feeling at its highest pitch—at a time when carried to an extreme, its vices were most prominent and its virtues (now universally recognized) most hidden. With the change in public feeling, it has long lost the sanction and the support of the intelligent public. Thousands, nay, I suppose, hundreds of

thousands, disregard it Sunday after Sunday, and yet none of these "law breakers by the thousands," as they have been well termed, suffer in the slightest in the public estimation or in the esteem of the most moral and upright of the state.

The laws against disorders in churches, and those against tippling shops, rioting, quarrelling, &c., on Sunday, should not be classed as Sunday laws; they are laws of general import, applicable to all lawful assemblies of citizens, and to all holidays. None, I suppose, will dispute their wisdom. Men gathered together on such days are apt to drink to excess, and drinking to excess injures the state. The state, therefore, has the right, and it is its duty, to check this tendency by closing such shops on all days of unusual temptation, whether Sunday, Fourth of July, election day, or any other similar day.

ANNUAL ADDRESS

BY

CORTLANDT PARKER.

Alexander Hamilton and William Paterson.

In appearing before you on this occasion, I obey one of the suggestions made in the admirable address with which our last year's meeting was favored. The speaker then said that it seemed to him that if these meetings were to succeed, we should regard such invitations as not under any circumstances to be declined. Agreeing with this, I have undertaken a task, at a late hour, and when the pressure of daily work and the intense heat made proper preparation impossible. I must, therefore, ask your most charitable judgment, almost to the extent of taking the will for the deed.

I emulate my predecessor, likewise, in the subject I have selected. He discussed with a felicity which it is a pleasure to recall, the subject of Chief Justice Marshall and the constitutional law of his time, claiming that he was not merely its expounder and commentator, but its very author—its creator. And he worthily invoked our gratitude to the man who had given to us so precious a blessing. I shall strive to bring before you two men, whom I shall take leave to regard as among the chief architects of the constitution, both lawyers of highest eminence; one, whose imperishable fame is national if not cosmopolitan; the other, not nationally well known, although occupying for years high national station, but whose ability and usefulness within his own state have obtained for him there a grateful veneration not to be exaggerated. Both these men were distinguished for wisdom. Both benefited greatly the country at large. Heads of opposing schools of political

thought, each saw his peculiar views made part of the structure of our government. Hence, I make them jointly my subject. I refer to Alexander Hamilton, of New York, and William Paterson, of New Jersey.

I shall need to say little to justify my choice of topic. What can tend more to advance and "add to the honor of the profession of the law," than to recall from the past its heroes, and dwell on their usefulness to their country?

And if, through such occasions, names that ought not to die, are preserved, to receive a little longer the gratitude they merit, more good, and perhaps more gratification will ensue than from the discussion of legal ethics, or perhaps of present events which might be thought to have a bearing on the purposes of our association.

I call them two of the chief architects of the constitution, and yet I can hardly deem it right to regard that as a thing constructed. It was a growth rather than an edifice. If it were one at all, it was one which, like the second temple, rose without the sound of axe or of hammer—the work of events rather than of men. It should be likened rather to the planetary system, which came forth evolved through forces whose working was never perceptible, and was shaped by Almighty hands into order and beauty and power. Or to the earth itself, whose teeming fertility overlies deep geological formations, themselves through mystic periods the product of commingled gases suited to their final production. For, as it seems to me, our composite system, in which the sovereign people express their sovereignty as to all matters indispensable to national existence, in the federal government, as to all pertaining to local necessities, in that of the states, was at least shadowed forth during colonial times. The grants of territory and its government made by the kings of England to adventurers or to favorites, under which the original thirteen colonies were formed, established substantially the very union which we enjoy. All matters of police, technically so called, were regulated by the colonial legislatures. Commerce, foreign

and domestic, the making of peace or war, and all the tasks of nationality belonged to the British crown. Had we possessed a share in this national government through adequate or proportionate parliamentary representation, it may well be doubted how much need there would have been of revolution.

When the second Charles and James and their predecessors in colonial grants deputized their grantees as viceroys over the lands they conveyed to them, and guarded their administration as they did, by directing the formation of colonial legislatures, reserving to themselves, nevertheless, the attributes of national sovereignty, they all but formed our present nation. For each of these colonies was a restricted sovereignty—restricted as to scope, but sovereign within it;—yet all remained subject to the common head and were united by this subjection. They could not make war with each other, nor with any foreign authority. They could not regulate commerce, whether between the citizens of other colonies or with those of other countries. They could not provide for the common defense, though often compelled by the neglect of that duty to attempt its execution. They could not make treaties with each other except by permission of the crown. All these necessities of sovereignty and their corresponding duties were retained by the crown. And the present Union does little more than substitute for the colonial existence a different parliament, and a differently named executive chosen by ourselves, and despoiled of many of the objections, not generic, which belonged to the legislature and the executive of Great Britain.

And yet, though, if I am right, the federal constitution was little more than a return to an ancient union, substituting for the former national sovereignty a new one created by the people themselves, with limits upon its power greater than before, and though this new creation naturally grew out of the circumstances in which the colonies found themselves, when the war of the revolution ceased—though, in short, some such constitution must soon have been adopted when that in which we have such pride, was formed, yet there is a sense in which the men I have

named and others, their coadjutors, were indeed architects of our constitution, and merit, for their work, our abounding gratitude.

If there could be a building, whose corner-stone was removed, but whose timbers and walls had so long stood together, that through propinquity of its parts, the hardening of cement, or other like causes, it did not fall, but remained ready for a ruin which all men saw could only be postponed, and which at every moment was imminent, that building would be a correct representation of the American Confederacy at the termination of the war of 1776. The colonies, now states, had a paper bond which asserted that they were joined by articles of "perpetual union." The war, to a great extent, had invested congress with a practical sovereignty, not defined by absolute law, and certainly not capable of being adequately enforced. But when the war ceased, it was as if the corner-stone of the union was gone. And so it was, for that corner-stone was nationality. During the war, necessity supplied it. But when it ceased, there was the debt of the war, to be avoided, and postponed if not repudiated. There were the public lands, lying within the borders of the several states, and therefore tempting their cupidity to deny the joint property growing from the consideration which the blood and the money of the nation had given for them. There was commerce, foreign and domestic, with ports in some states reaping benefits from the trade of others, and tempting them to a system of imposts by which the necessities of one were supplied at the expense of its neighbors. And there was the jealousy, occasioned or stimulated by one or all these causes, naturally subsisting between such small or poor states as Delaware, Rhode Island, Connecticut, New Jersey, and we may add New York, and the then larger and more populous communities of Massachusetts, Virginia, and South Carolina. Things looked dark, indeed. The army, unpaid, complained, almost threatened; and at last yielded a postponement of its righteous demands to the absolute *tears* of Washington. Foreign governments would make no treaties, because the "Confederate

Assembly" had no power to secure their observance. "We are one nation to-day," moaned Washington, "and thirteen to-morrow. Who will treat with us on such terms." There were those abroad, and at home, too, who meditated, not disapprovingly, the return of the old, ill-working confederacy to its rejected allegiance, the replacing, for security, in the new government of the corner-stone of British nationality.

It was in this exigency that these "architects of the constitution," and among them the two I have named, met, with a fervor of patriotism, of self-abnegation for the good of their country, educated through its strife for independence, and stimulated by all the trials through which they had passed, and with a wisdom, tact, and persistency more admirable than even their intellectual ability.

Nor can one read the records of the time, and the correspondence of its distinguished men, without a suspicion rising into well nigh conviction, that Madison and Washington of Virginia, Hamilton and Jay of New York, Livingston and Paterson of New Jersey, Robert and Gouverneur Morris and Wilson and Franklin of Pennsylvania, Sherman and Ellsworth of Connecticut, and King of Massachusetts, with others, were almost combined in the intent to produce history, and, as it were, create events, out of which should, in the end, proceed a government.

Certain boundary disputes between Virginia and Maryland produced a meeting of commissioners for its settlement, and this commission visited Mount Vernon; there, Washington helping, a scheme was concocted for another commission to meet, with deputies from all the states, to consider the whole subject of the commerce of the United States. Hamilton seized the opportunity in New York and was made a commissioner. New Jersey took a step beyond the other states. She empowered her commissioners to treat not only on commercial regulations, but of "other important matters." This resolution was probably known to, if not prepared by Paterson, whose action in all public matters in New Jersey was then continually invoked.

And this action of New Jersey was seized upon by Hamilton, who procured from his fellow commissioners an address to the states and to congress, recommending a convention of deputies from the different states, for the special and sole purpose of "devising such further provisions as might appear to be necessary to render the constitution of the federal government adequate to the exigencies of the Union."

Guardedly veiling his views and intentions, in view of the jealousies of the time, the world now knows fully what they were. As early as September, 1780, when only twenty-three years old, in the camp, and amidst military duties as the chief aid-de-camp of Washington, he had, in a careful letter to a distinguished friend, then and afterwards prominent in public life, sketched the failure of the confederation, and its remedies. From this memorable letter, now so well known, I yet quote a small portion. "The first step must be to give congress powers competent to the public exigencies. This may happen in two ways; one, by resuming and exercising the discretionary powers I suppose to have been originally vested in them for the safety of the states, and resting their conduct on the candor of their countrymen and the necessity of the conjuncture; the other, by calling immediately a convention of all the states, with full authority to conclude finally upon a general confederation, stating to them, beforehand, explicitly the evils arising from a want of power in congress. * * * * The confederation, in my opinion, should give congress a complete sovereignty; except as to that part of internal police which relates to the rights of property and life among individuals, and to raising money by internal taxes. It is necessary that everything belonging to this should be regulated by the state legislatures. Congress should have complete sovereignty in all that relates to war, peace, trade, finance, and to the management of foreign affairs; the right of declaring war, of raising arms, officering, paying them, directing their motions in every respect; of equipping fleets and doing the same with them; of building fortifications, arsenals, magazines, &c; of making peace on such conditions as

they think proper; of regulating trade, determining with what countries it shall be carried on; granting indulgences, laying prohibitions on all the articles of export or import; imposing duties, granting bounties and premiums for raising, exporting or importing, and applying to their own use the product of these duties, only giving credit to the states on whom they are raised in the general account of revenues and expenses; instituting admiralty courts &c.; of coining money, establishing banks on such terms and with such privileges as they think proper; appropriating funds and doing whatever else relates to the operations of finance; transacting everything with foreign nations; making alliances, offensive and defensive, and treaties of commerce, &c. The second step I would recommend is, that congress should instantly appoint the following great officers of state; a secretary for foreign affairs, a president of war, a president of marine, a financier, a president of trade."

With views so long and so fully matured, we are not surprised to find this great man a leader in the convention. Not at first, for he proceeded with the utmost wariness and care. He was so young. This was probably one reason. But his main one undoubtedly was, that the views of others might be fully ventilated, and that, if they proved imperfect or unpopular, there might be a readier crystallization upon his own. After some days (the convention entered upon its task May 25th), Mr. Hamilton, on the 18th June, elaborated his views and submitted with them a draft of a constitution, which became a nucleus of debate, and was the fullest presentation of a scheme for nationality; as were the propositions of Mr. Paterson of the counter idea, the retention of a mere confederacy with no sovereignty, except in the states. I select these two because they were the special champions of the two great features which distinguish the constitution: federal sovereignty in things national, and state sovereignty in all others. Neither of them wholly approved the result. To the one it was defective as not being sufficiently centralized. To the other, because the power of the states was too much restricted. Coming from a small

state and appreciating the necessity of avoiding mere democracy, Paterson successfully combatted the idea of a proportional representation in the senate, and made the election of the executive the act of the state; thus promoting the stability and efficiency of the government. While Hamilton, earnestly advocating a life term for the president, was successful in that the power was placed in the hands of one man, which many desired to leave with congress only, though his period of office was confined to the term of four years without restriction upon re-election. It had been better, let me say as I pass, if a longer term had been created, with a prohibition of re-election till after the intervention of another term.

I will not dwell farther upon the work of these distinguished men in framing the constitution, nor upon their subsequent, no less deserving, labor in securing its adoption. To Hamilton belongs the credit of earliest invention, of persistent and urgent advocacy of its necessity, of skilful management so as to bring about a convention, and of wise and prudent behavior within that august body. But most of all is he to be held in remembrance for his subsequent exposition of its meaning and his successful canvass in its favor. It is true, as urged by my distinguished predecessor in this duty, that to Marshall we owe the creation of our body of constitutional law. But it is true, mainly, because he spoke from the judgment seat, and because his doctrines thus had the force of authority. Those doctrines he did not originate. They came to him mainly from the Federalist, far the largest part of which was from the pen of Hamilton, and from his subsequent writings while secretary of the treasury, especially his discussion of implied powers contained in his report upon the legality of the National Bank. The reasoning of Webster, upon which that most magnificent of Chief Justice Marshall's judgments, that in Gibbons *vs.* Ogden, was founded, was but a forcible enforcement of the views of Hamilton, expressed with a felicity and force as great as if not greater than his own.

To my mind Alexander Hamilton was the most wonderful

man, unless we except Benjamin Franklin, conspicuous in American annals. His life was both a romance and marvel. Child of an inefficient father, and of a mother whose history was chequered and unfortunate, and who died while he was yet a child, he may be said to have been without home education, and was early a waif upon the sea of fortune. Before he was thirteen he was taken from school. He entered a counting-house, and at fourteen was in direction of his employers' large mercantile business. When but twelve years old, he wrote a letter, still extant, in which he said: "I contemn the grovelling condition of a clerk or the like, to which my fortune condemns me, and would willingly risk my life, though not my character, to exalt my station. I am confident, Ned, that my youth excludes me from any hopes of immediate preferment, nor do I desire it; but I mean to prepare the way for futurity. * * * I shall conclude by saying, I wish there was a war." Assisted by those who perceived his talent, he went to New York, when fifteen, to enter school and college; and while there began to be a statesman. He was the author of the most popular tracts on the side of the people in the controversy which culminated in the Revolution. At seventeen he was *the* orator of a great public meeting, which listened astonished to the wisdom which fell from one so young. The next year a convocation of merchants hung amazed upon his lips. When a mob of infuriated whigs attacked the house of the president of his college, he stood between them and their victim, and braved and soothed them into forbearance. Entering the army as a captain of artillery, his discipline attracted attention, the general in chief invited him to be his aid, and thenceforward he was his constant and most valued counsellor. At twenty-three he wrote the scheme of the constitution already quoted. In March, 1782, when twenty-five, he began the regular study of the law. In July he was admitted to practice. And he was already then the author of a manual on practice, so good as to be an instructive grammar to other students and the ground work of subsequent treatises. Next year, when only twenty-six, he drafted, and carried

through the New York legislature, a proposition for a general convention of states, and with four others represented his state in congress. He, Madison and Ellsworth were a committee of that body to address the country on its situation. Thirty, when the constitutional convention met; thirty-three, when he took his place at the head of the treasury; prime minister, in fact, of the first administration; the founder of our national credit; acknowledged head of the federal party; fountain, in the main, of its doctrine,—he is an instance of precocity in wisdom, without a parallel in America, and with few rivals elsewhere. The astute Talleyrand, who knew him well, said of him: "I consider Napoleon, Fox, and Hamilton, the three great men of our time, and if I were called to decide between the three, I should not hesitate to give the first place to Hamilton. He devined Europe." The statement of Mr. Curtis in his invaluable History of the Constitution, sums up his character felicitously: "His great characteristic was his profound insight into the principles of government. The sagacity with which he comprehended all systems, and the thorough knowledge he possessed of the working of all the freer institutions of ancient and modern times, united with a singular capacity to make the experience of the past bear on the actual state of society, rendered him one of the most useful statesmen that America has known. Whatever in the science of government had already been ascertained; whatever the civil condition of mankind in any age had made practicable or proved abortive; whatever experience had demonstrated; whatever the passions, the interests or the wants of men had made inevitable, he seemed to know intuitively. But he was no theorist. His powers were all eminently practical."

I say so much of the statesman, that I leave myself little time to speak of him as a lawyer. And true it is, that his life was too short and too busy in public affairs to admit of such prolonged success in the profession as would make his eminence there as conspicuous as elsewhere. Yet he was the acknowledged leader of the New York bar. His statesmanship was

mostly in the region of constitutional law. He was a distinguished, almost unrivalled, orator in the highest sense of that word. Tradition makes him out well nigh omnipotent as well with the court as with juries. James Kent was as enthusiastic respecting his forensic as was Talleyrand concerning his public eminence. "Among his brethren," said he "Hamilton was indisputably pre-eminent. This was universally conceded. He rose at once to the loftiest height of professional eminence, by his profound penetration, his power of analysis, the comprehensive grasp and strength of his understanding, and the firmness, frankness, and integrity of his character. We may say of him, in reference to his associates, as was said of Papinian, *omnes longo post se intervallo reliquit.*" He declined the post of chief justice, and when he died was busy striving to repair the loss of private fortune—for he retired from the treasury poor—by earnest practice of his profession. His reputation at the bar was high, not only for capacity, but for integrity—the integrity of a truly brave man, who scorned the least approach to chicanery, who won by fair argument and open dealing, was frank, honest, and fearless with the court, tender towards distress, just and forbearing in charges—in a word, knightly in the forum as of yore in the field. The many who loved, adored him; the few who hated, feared him; yet with acknowledgment of his worth. His death was mourned as a public calamity, and by it, his slayer was himself socially, and in time civilly, slain.

The events of the last twenty years have naturally renewed the interest of thinking men in Hamilton. He may be styled the apostle of nationality as opposed to the doctrine of state rights. If he was wrong at all, it was in a tendency towards under-valuation of the latter, which experience demonstrates to be of only minor importance. It was natural that it should be so, especially because of the fervor with which, immediately upon the adoption of the constitution, parties divided upon this topic. Hamilton saw, as if with prophetic eye, where the strain of its future was to come. Speaking, in 1787, he said, "though

the states will have a common interest, yet they will also have a particular interest, and particular interests have always more influence upon men than general. The several states, therefore, consulting their immediate advantage, may be considered as so many eccentric powers tending in a contrary direction to the government of the union, and as they will generally carry the people along with them, our confederacy will be in continual danger of dissolution. This is the real rock upon which the happiness of this country is likely to split. This is the point to which our fears and our cares should be directed. To guard against this, and not to terrify ourselves with imaginary dangers from the spectre of power in congress, will be our true wisdom."

If I have said aught to stimulate the study of the life and writings of Alexander Hamilton, I have, indeed, succeeded. I turn from that topic, briefly to portray the distinguished Jerseyman, who labored in the convention beside his more distinguished friend, his views tending in a different direction, who made it his peculiar care to retain the feature of state sovereignty and equality, as the other, to obtain that of nationality and central power.

There was likeness in the history of these men: both were born abroad—the one, as all know, in Nevis, one of the West Indies; the other, either upon the sea, or more probably near Londonderry, in Ireland. Both were of Scotch descent. Both struggled in early life with poverty. Both postponed the achievement of education till a comparatively late period in adolescence. Both were men remarkable for elevation of character. Here the parallel ends. Paterson, always a civilian, was a studious, plodding lawyer, and only incidentally a statesman. Hamilton was principally a statesman, and rather incidentally than directly the lawyer. Hamilton, as a lawyer, was especially noted as an advocate. Paterson, though an advocate, and one of no mean ability, was especially a legal student and scholar. His forte was learning and exactness; he made no pretension to oratory; spoke always with careful prepara-

tion, and mostly from manuscript. Hamilton, one would say, was a man of genius, though his good sense led him always to depend upon labor. Paterson owed less to nature, and through labor sought and attained excellence.

The peculiarities of Paterson may be seen in his course in the convention. He insisted that its action must be confined within the powers conferred by the states, and whose exercise was approved by congress, and he denied the right to do more than amend the articles of confederation. And he was firm to the very last in asserting the sovereignty of the states and the continuance of their equality. The two plans originally and mainly discussed by the convention were that from Virginia, then the representative of the large states, presented by Edmund Randolph, whose leading features were representation in each of two houses proportionate to contribution or free population, a single executive, and practically nullifying the states as confederate sovereignties, and the plan of New Jersey presented by Paterson, whose distinctive points were retention of state sovereignties, and state equality, with an executive board of several persons, having carefully limited powers. It was soon manifest that this plan, as such, would not be adopted, but the contest over it secured to the states equal representation in the senate, and the choice of the electoral college—and generally so much of state control as belongs to the constitution. Said John C. Calhoun, in 1847, "The three states, Massachusetts, Pennsylvania, and Virginia, were the largest, and were actively and strenuously in favor of a 'national' government. The two leading spirits were Mr. Hamilton, of New York, probably the author of the resolution, and Mr. Madison, of Virginia. In the early stages of the convention there was a majority in favor of a 'national' government. But in this stage there were but eleven states in the convention. In process of time New Hampshire came in—a very great addition to the federal side, which now became predominant. It is owing mainly to the States of Connecticut and New Jersey, that we

have a 'federal' instead of a 'national' government—the best government instead of the worst and most intolerable on earth. Who are the men of these states to whom we are indebted for this admirable government? I will name them; their names ought to be engraven on brass and live forever. They were Chief Justice Ellsworth, Roger Sherman, and Judge Paterson, of New Jersey. The other states further south were blind; they did not see the future. But to the coolness and sagacity of these three men, aided by a few others not so prominent, we owe the present constitution." I quote the words of this distinguished witness without agreeing at all with his views of the constitution. That instrument is both national and federal. Each characteristic is essential to its usefulness. A government merely federal is a rope of sand. One merely national would be incompetent to such a task as the securing the rights and happiness of a continent. It is the possession of both which assures the future as well as the present, and makes the rope, not sand, but adamant.

Had Mr. Calhoun been asked which of the three distinguished men he named did most to attain the result he eulogized, he could hardly have failed to mention Paterson. The study of the debates of this convention leaves one in no doubt. From first to last, with conscientious persistency and admirable force, he labored for this object, exceeding all others in the devotion with which he pursued it.

I feel that I shall be excused for what may be regarded as exaggerated eulogy when speaking of this man. His usefulness and eminence were largely national, and therefore have I thought it right to make his name prominent here. He was very instrumental in procuring the assent of New Jersey to the constitution, and soon after took his seat as one of her senators in the first congress held under it. And then, as one of the committee on the judiciary, with his friend and college classmate Ellsworth, who was its chairman, he helped to frame the judiciary act, still, without much important change, the scheme of

practice in the courts of the Union. Every lawyer appreciates the nicety, precision, and wisdom needed for this task.*

He left the senate to be governor and chancellor of New Jersey, and in March, 1793, was appointed by President Washington one of the justices of the Supreme Court, a post which he filled till 1806, when he died. During his service there he found time to execute a local task for which he is held in most grateful remembrance in New Jersey, the revision for re enactment of all the statutes of Great Britain, which before the Revolution were practiced under, and by its constitution extended to that state, as also all the public acts of its own legislature which remained in force. The result of his laborious work, carried through several years, is a body of law of which the state is most justly proud, securing, it is believed, a nearer approach to pure and unalloyed common law, in principles, machinery, and practice, than falls to the lot of any other state in the Union.

Judge Paterson's judicial career was highly distinguished. He was expected to have been Chief Justice. It is said, indeed, that he declined the post, fearing that his promotion would hurt the feelings of his associates, and thus it came about that Marshall was selected.

The reports of Cranch and Dallas give some of his decisions. One of the chief architects of the constitution, in that he secured its federal features, and attained the stability and capacity of unrestricted extension which spring therefrom; chief in usefulness in launching the new ship, by preparing the act which so carefully defined the jurisdiction of the courts of the newly formed nation, and inappreciably useful to his own state by his learned and skilful adaptation of the body of British law, it is right that his name should be remembered and honored here, and that your speaker, a citizen of New Jersey, should seek to prevent its being forgotten.

*Judge Dillon in his useful work on "Removal of Causes," speaks of the judiciary act "as one of the most remarkable instances of wise, sagacious, thoroughly considered legislative enactments in the history of the law."

For it is sadly true, to quote the words of another, that "no reputation is more notoriously ephemeral than that of a distinguished lawyer. In his own generation he fills a large space in the public eye; in the next, a few reminiscenses handed down in the profession alone rescue his memory from oblivion; the third generation scarcely preserves the hollow sound of the once famous name." Is it not a part of the duty of this association to combat this evil? Am *I* not right, was not my predecessor right, in holding up before you, brethren all, the names we have endeavored to aid in canonizing, especially because through their labors the country and the world possess the great gift of the federal constitution? And can it be otherwise than right, in any view, that pains should be taken, in this and every way, to acquaint the bar of every state with the distinguished men of the others? For how little do we know of each other? How utterly ignorant in fact are we, outside of each state, of the laws, the lawyers, and even the judges who make up the jurisprudence of the country? Is it not absolutely true that the bar of each state in the American Union is better acquainted with the laws and the lawyers of Great Britain, than they are with those of the most populous of the states of the Union? We cannot, otherwise than through social intercourse, perhaps, remedy this as to those who now live. But the great names of the past, especially if their owners were useful to the nation, should be familiar to all.

One can hardly wonder at the ability and the tone of the English bar, who notes the completeness with which, with or without intention, reverence for its great men is kept alive. The halls of the inns of court where for centuries every barrister has been educated, are hung with noble portraits of the great lawyers each has produced, accompanied by brief records of their history, in the presence of which, the zeal, industry, and ambition of each student must be ashamed of self-indulgence. He labors under the very eye of Holt and Kenyon, Hale, Mansfield, Somers, and all the host "of whom the world is not worthy." Their example nerves him; their characters elevate

him. He is a better and a greater man because he is taught that he is their fellow.

Our complex system so increases the number of courts, judges, and lawyers, and so separates them from each other that we cannot bind the profession together as they do in England. And it is especially impossible that the legal surroundings of the process of legal education, should appeal, as there, to imagination and ambition. The more need that effort should be made to immortalize useful and noble lives—to stimulate ourselves to be worthy of the noble profession to which we belong.

It is the tendency of the times to degrade the profession into a trade; to make it a means of self-aggrandizement, a ladder to political office; to forget or despise its lofty theory—the theory which in almost every land has regarded the advocate as a minister of justice, and required of him the exhibition at all times of moral courage, of self-forgetfulness; the vindication of truth; a tender and unflagging protection of weakness and distress.

It is our duty to struggle against this demoralizing tendency, to elevate ourselves and elevate each other into the atmosphere, moral and intellectual, of the great exemplars of the profession; and for that purpose, to contemplate and remember their virtues, and hold them up for admiration and emulation.

There stands, if indeed the commune has not destroyed it, at the great stairway leading to the court rooms in the halls of justice, in Paris, a statue which no lawyer can behold without intense emotion. It is that of Malesherbes, the brave defender of Louis XVI on his trial before the crowd of cowards, fanatics, and assassins, which doomed him to death. He was a man of three score years and ten. He had been a minister under the king, and distinguished for the boldness with which he then asserted popular rights, and aided in the march of progress. He had retired from office defeated, while other counsels than his ruled the hour. But when his king was dethroned, accused, and in danger of his life, he came promptly to his rescue, and begged and was accorded the

dangerous privilege of joining in his defence. Fearlessly and earnestly he pleaded his foredoomed cause before the eight hundred excited men, who were both the accusers and the judges of the unhappy prince, standing beside him to the last, regardless of the fate for himself, which he knew he invited. That fate he met. Ere long, he and his family followed their master to the guillotine, their only crime that he had defended Louis Capet. Yet, it seems to me, it was reward enough for all, that there, just there, where every advocate in Paris must forever see it, his statue should be placed; its calm duty-loving eyes invoking the veneration of the profession through all the ages, inscribed with the epitaph which chronicles his history—"*Strenue semper fidelis regi suo, in solio veritatem, praesidium in carcere, attulit.*" "Faithful ever to his king, when on the throne he told him the truth; when he was in prison he brought him aid."

Moral courage—bravery for the truth, as one sees the truth—bravery for the helpless, the greater in proportion to their distress—all, not for gain, but because he is a minister of the law, sworn to seek and to do justice and follow right, hercin is epitomized the moral duty of the advocate.

Such courage—such appreciation of duty, thank God, is not rare. The opportunity for its exercise seldom comes without finding the man ready. If we would have it always so, let us look back often, at the heroes of the bar; let us study and rival their virtues; let us make this association and its meetings a means of perpetuating their fame, and with it their self-devotion and their love of their country and their kind.

PAPER

READ BY

GEORGE TUCKER BISPHAM.

Rights of Material Men and Employees of Railroad Companies as against Mortgagees.

In a comparatively recent treatise on railroad securities, by a gentleman of the Boston Bar, the following observation occurs:

"Railroad bondholders have, within the last few years, sometimes experienced much surprise, to say nothing of other and stronger emotions, at finding in the course of events that mortgage liens, which were nominally and actually, at the time they were created, first liens upon the mortgaged property, have been adjudged by the courts to be subject to other claims, subsequently incurred."

This was published early in 1879. About eighteen or twenty months later, namely, on the 9th of the present month (August, 1880), the special masters in the foreclosure suit of Taylor *vs.* The Philadelphia and Reading Railroad Company, filed their report (which was approved by the court), in which they state that "it may now be taken to be the well settled doctrine of the American courts that when the holders of railroad mortgage bonds obtain the appointment of a receiver, pending proceedings for foreclosure, the court will apply the net income, *in its discretion*, to the payment of the employees and the material men who have furnished the labor, materials, and supplies necessary for the operation of the road."

The above sentence from Mr. Jones' book on railroad securities has been quoted, because it may be taken as a fair indication of the general view, expressed in professional literature, upon the subject which it is proposed to discuss in the present paper, and because it indicates also a feeling of dissatisfaction with the present condition of the law which is believed to prevail in a good many professional minds;—while the quotation from the master's report in the Reading Railroad case has been made for the purpose of showing the progress which, in the opinion of some gentlemen of the Bar and some members of the Bench, has taken place within the past two years in the doctrine under consideration, and the rapidity with which that doctrine is assuming definite shape.

The topic, indeed, is one which has not only attracted the attention of text writers, but has been the occasion of no little thought among members of the Bar, and has given rise to the expression of some diversity of opinion from the Bench. It is one of great practical importance;—it has been illustrated during the last ten years by some, but not many, decisions of courts of the highest authority;—it can be properly examined only by a constant reference to precise principles of law, and a careful avoidance of vague and unscientific considerations of public policy;—and the present state of the law in reference to it may be said to be in a formative condition, which it is the province of a convention like this to do something towards controlling, in order that the crystallization into hard rules may take such shapes as may be most conducive to justice, and most consonant with the true business interests of the community.

A hasty examination into the present condition of railroads throughout the United States, shows that on the first day of the present year more than ten thousand miles of railway were being operated under the control, more or less immediate, of courts; while we can roughly estimate the vast pecuniary interests involved, when we reflect that in one of the recent cases of insolvency of these corporations, labor and supply claims to the extent of over two million five hundred thousand dollars have

been presented, and alleged to have priority over bonds which the holders fondly conceived to be the first charge upon the road.

In view then, of the immense practical importance which this subject would seem to have, let us, very briefly, consider the point or points which have been reached by judicial decision upon the questions which have arisen under it. Of course, since the case of Fosdick *vs.* Schall* in the Supreme Court of the United States, some otherwise disputable propositions may be considered as finally settled; but it will be convenient, nevertheless, to recur to a few of the earlier authorities, in order, as already said, that we may see what rules may be fairly deduced from the cases, and what, if any, limitations may be suggested in reference to the doctrine announced by the recent decision of the Supreme Court.

How far, then, have the courts gone in holding that the rights of mortgagees may be interfered with or affected by the claims of material men and laborers?

One of the earliest cases in which the question seems to have arisen, is Clark *vs.* The Williamsport and Elmira Railroad Company in the Supreme Court of Pennsylvania, which (so far as is known) is unreported, except in the local papers of the day. The defendant company was put into the hands of a receiver in the year 1859. In the order appointing the receiver he was directed to pay "all sums due or maturing (at the time of the appointment) to the employees upon the said railroad," and the amounts "due and maturing" for materials and supplies about the operation and for the use of said road. Subsequently, some of the holders of the first mortgage bonds intervened, objected to these provisions in the order, and asked that they should be stricken out. It will be observed therefore that here was a *contested* case, and one in which the question of the right of the laborers and material men to interfere with the priorities of the mortgagees fairly arose. Mr. Justice Strong

* 9 Otto, 235.

(afterwards elevated to the Bench of the Supreme Court of the United States) by whom the order had been originally made, heard the application but refused to modify the order. The payment to the laborers and material men had been directed to be made out of the tolls and income merely, and the learned judge reached the conclusion that, as to this fund, the mortgagees had no rights paramount to those possessed by the claimants for wages and for the price of supplies. His reasons for so deciding will be noticed further on.

Shortly afterwards, the Louisville, Cincinnati, and Lexington Railroad was placed in the hands of a receiver upon the application of the trustee under the first mortgage. Subsequently, a petition was presented on behalf of certain employees of the road asking that their wages should be paid out of the earnings in the receiver's hands. This application was granted by the Vice Chancellor, and his decision was affirmed by the Court of Appeals—one judge dissenting. The case (Douglass *vs.* Kline) is reported in 12 Bush, 608. The ground upon which the majority of the court based the conclusion which they reached, was that the mortgagee either had no legal right to the earnings of the road, or had not thought it proper or expedient to insist upon that right; that he had elected to avail himself of the equitable remedy of a receivership; and that the court from whose hand this equitable assistance was sought, was at liberty to measure the terms upon which the required relief should be granted, and to insist that the complainant, asking for equity, should do equity to meritorious claimants such as the employees of the road were considered to be. The scales of justice were very much inclined towards the side of the wages claims, not only by the consideration of their intrinsic merit, but also by motives of public policy which (it was urged) required that an agency such as a railroad, being of a public rather than of a private nature, should be maintained, and that the risk of public loss, inconvenience, and possibly injury, should not be incurred by discouraging those whose labor was, from time to time, required to keep the road in a condition of efficiency and of safety.

The views of the majority of the court were, however, dissented from by one judge.

In still another case,* where an application was made to the Circuit Court of the City of Richmond for authority to apply the surplus earnings of the road, then in the hands of a receiver, to the payment of arrears which had been due employees prior to the receiver's appointment, an order to that effect was made, being placed by the Court, apparently, upon the grounds—*first*, because "the laws of humanity, the policy and laws of two States overriding all questions of pecuniary interest in stockholders or bondholders," forbade the relaxation of any means necessary to the maintenance and safe operation of the road, and *secondly*, because after default, while "the bondholders stood aloof without asserting their right to possession," the officers of the road were to be considered, *pro tanto*, as the agents of the bondholders, and consequently to have some sort of implied authority from them to take the necessary steps and incur the necessary responsibility for the protection and preservation of the property.

On the other hand, in the unreported case of Kitchen *vs.* The Pacific Railroad Company, an application was made for an order to pay a small sum due for supplies furnished shortly before the appointment of the receiver; and although similar claims to the amount of $300,000 had been paid previously, *by consent*, yet on the claim now presented being opposed by the bondholders, its allowance was refused. A similar ruling was made in the Circuit Court of the United States for the Eastern District of Virginia, in the administration of the Atlantic, Mississippi, and Ohio Railroad Company; while in Denniston *vs.* The Chicago, Alton, and St. Louis Railroad Company, 4 Bissell, 414, the Circuit Court for the Northern District of Illinois refused to order the claims of certain creditors who had furnished supplies to a road to be paid out of a fund realized by a foreclosure sale in preference to the bondholders. Moreover, the Supreme Court

* Duncan *vs.* The Chesapeake & Ohio R. R. Co., 3 Cent. L. J., 579.

of the United States, in Galveston R. R. Co. *vs.* Cowdrey, 11 Wallace, 459, refused, with some emphasis, to put the claims of material men against the estate of an insolvent railroad company upon the footing analogous to that of the maritime lien for repairs. Indeed, this supposed analogy has excited some little ridicule, and a clever phrase has been coined for the rather contemptuous dismissal of this theory, and it has been curtly turned out of Court as "an admiralty lien on wheels."

Putting out of consideration those cases in which orders allowing the payment of wages and supply claims have been made *by consent*, and also those in which the decision turned upon the effect of some local statute, the above are believed to be all the cases which have arisen (and have, at all events, found their way into the regular reports) directly upon the point, except the case of Fosdick *vs.* Schall, in the Supreme Court of the United States, and a still later case in Vermont. It will be observed that they leave the question in a very unsatisfactory condition. It is true that the general rule to be applied to such cases has been stated to be, that he who seeks equity must do equity; but this rule, which is rather a vague one at best, must obviously be applied with some care and qualification, and it leaves unanswered the important question, what sort of equity is it that the complainant, in the case asking for a receiver, must do in order to get the equitable relief which he seeks? Must he submit himself to the maxim that equality is equity, in which case the creditor who loans money to the company without security would have just as good a standing as the man who furnishes supplies, or he who does work? And to this extent, indeed, would we be led if we carelessly applied the decision of the Supreme Court of Massachusetts, in Ellis *vs.* Boston, Hartford and Erie Railroad Company, 107 Mass., 1; where a simple contract creditor was, for reasons special to that case, preferred. Indeed, if we were to adopt the view that the doing of equity by the complainant in a bill for a receivership means the admission of all creditors to an equality of distribution of the fund realized by the action of the Court, as one of

the conditions of the receiver's appointment, a very curious result would follow. A second mortgagee has always been supposed to have acquired priority, so far as the income of mortgaged property was concerned, over the holder of a prior mortgage, by obtaining a receiver. See Galveston R. R. Co. *vs.* Cowdrey, 11 Wallace, 459; Gilman *vs.* Telegraph Co., 1 Otto, 603; American Bridge Company *vs.* Heidelbach, 4 Otto, 798. Hence, until the first mortgagees choose to file a bill and have the receivership extended to them, they have no right to interfere with the second mortgagee's perception of the revenues. Now, if the doctrine that the complainant in a receiver's bill must do equity, be construed to mean that the relief will only be granted on the terms of putting all creditors on equality, the first mortgage bondholders would, equally with the second, be entitled to the benefit of the latter's application; and the rather extraordinary result would ensue, that the very application to secure priority by a diligent prosecution of rights, would be the effective means of defeating them. Obviously, there is here a field in which professional labor may well be employed in attempting, if possible, to arrange, systematize, and to give precision to the judicial views which have been expressed, and to arrive at some conclusions upon the subject a little more definite than the general principle just mentioned, or (to quote again the language of one of the decisions above referred to), "the laws of humanity," or "the policy of two States." If the "pecuniary interests of stockholders and bondholders" are to be overridden at all, it must be by some very satisfactory considerations, and mortgagees may not unfairly ask for a logical reply to the pertinent question which has been sometimes put on their behalf, "Why, in distributing the assets of an insolvent railroad, are the secured creditors the only ones postponed?" The case of Fosdick *vs.* Schall has been supposed to have done very much to put the subject upon a proper basis, and the importance of the case itself, the condition of the law at the time it was decided, and the weight to be justly attributed to the exalted authority by which the judgment was

rendered, are sufficient, it is believed, to justify a somewhat extended notice of it. The facts of the case, it will be remembered, were these:

Schall had sold and delivered to the Chicago, Danville and Vincennes Railroad Company certain coal cars at a price payable in instalments,—the bill of sale containing a proviso that the cars were to remain the property of the vendor until paid for. After a portion of the cars had been delivered, the road went into the hands of a receiver appointed by the state court under a bill filed by certain mortgage bondholders, and subsequently passed into the control of receivers appointed by the federal court, under proceedings instituted by bondholders under another mortgage. A balance of about $110,000 remained due to the vendor of the cars. The receiver appointed by the United States court entered into a contract with the vendor, by which it was agreed that a certain monthly rent should be paid by the receiver, while the cars were in his possession, and used by him. The road was subsequently sold, and the proceeds paid into court for distribution. These proceeds (of the road itself) apparently constituted the entire fund which was the subject of litigation. The vendor of the cars, after the sale, presented his petition claiming, first, a return of the cars, and secondly, a payment out of the proceeds of a rental for the use of the cars during the six months prior to the appointment of the receiver by the state court, and during the period covered by the possession of that receiver. The court below allowed both of these claims, holding, in the first place, that the title to the cars had not passed to the company, and was consequently not covered by the mortgage, and secondly, that the vendor was entitled to a rent for the use of his property during a reasonable time prior to the appointment of the first receiver, and, also, during the period when the receiver was in possession of the property, and was using the cars.

This decision upon the first point was, on appeal, affirmed by the supreme court, but on the second point reversed; and it was held that the equities of the owner of the cars were not

such as to entitle him to a payment for their use out of the funds in court, which had been realized by a sale of the corpus of the mortgage property.

The grounds upon which the decision upon the second point are rested by the chief justice are useful to consider. The chief justice alleges that, in a proper case, such a claim as that of the vendor of the cars ought to prevail even against the lien of a first mortgage, and this, upon two grounds:—*First*, Because the remedy of a receivership, invoked by the mortgagees, is one fo obtain which they are obliged to resort to equity, and which a chancellor will not administer except upon equitable terms; and *secondly*, Because it often happens that the funds which would, in a normal financial condition of a railroad corporation, go to the payment of its debts for current supplies, furniture, and repairs, are, when insolvency or embarrassment is impending, used to pay interest on bonds, and thus to avert threatened proceedings in foreclosure on the part of the bondholders; and that, when this is so, it is but equitable that those who have been disappointed in reaching funds which in the ordinary course of business would be used to pay their debts, should have a right to be made whole out of funds which would otherwise be applicable to the payment of the principal and interest due to the bondholders. But the court held that the case at bar did not present either of these two grounds for a favorable consideration by a chancellor, and that consequently the equities of the vendor of the cars were insufficient to overcome the *prima facie* equitable rights of the mortgagees.

From this *resumé* of authorities, it therefore would appear that the grounds upon which parties who claim to be entitled to payment for wages and supplies have had priority given to their demands as against the lien of mortgagees, are mainly and substantially as follows:

First. That public policy, involving considerations of public convenience and safety, requires that the expenses of maintaining the efficiency of a *quasi* public highway, should be defrayed in preference to any other obligations.

Secondly. That the appointment of a receiver is an equitable remedy, which a chancellor would only apply at the price of exacting a provision for claimants whose demands a court of equity would consider highly meritorious, and would consequently protect; and

Third, That when the current earnings of a road, which would ordinarily be used to meet current obligations for labor and supplies, are in consequence of impending insolvency used to keep down interest on bonded debt, the disappointed creditors are entitled, by an equitable adjustment of funds, to be subrogated to the rights of bondholders as against the income of the road, or even as against the proceeds of the road itself when sold.

To these considerations may possibly be added another, which does not seem to have received much attention, but which should, perhaps, be borne in mind when the decision in any given case may involve the distribution of the proceeds of personal property acquired after the creation of the mortgage, but which is, nevertheless, claimed to be embraced in its terms, viz.: that the right of mortgagees to a lien upon such subsequently acquired property is one not of common law but of equity, and that it should fairly be subject to any qualifications or conditions which would prevent its assertion from being inequitable or unjust.

Let me say a few words as to these grounds as they are applicable, first, to the *corpus* of the mortgaged property as it existed at the date of mortgage; second, to the earnings of the road; and lastly to personalty acquired after the date of the mortgage, but claimed to be embraced in its terms. In so doing we shall, perhaps, be able to see clearly which, if any, of these foundations of the doctrine under discussion are to be rejected and which retained, and what qualifications are to be attached to such of these foundations as may be admitted, in a general sense, to be sound.

And first, as to the mortgaged property as it existed at the date of the mortgage, including improvements which may have been annexed to the realty.

Now what the general rule upon this subject ought to be would seem scarcely to admit of a question. *Of course*, as the mortgagee's right is a purely legal one, and as he needs no aid from a chancellor for its recognition or enforcement, it ought to prevail as against any purely equitable claim arising subsequently to the creation and acquisition of the legal right, and no considerations of public policy or expediency ought ever to give us pause as against the paramount consideration of the observance of contracts and the paramount expediency (to put it on the lowest ground) of obtaining money to build railroads, by offering to those who advance it, security whose priority cannot be disputed. For in all of the authorities but one, which have been referred to, the contest was over *income*, and a claim against the *corpus* of the mortgaged property is a very different matter. The first serious question, therefore, would seem to be, ought there to be any exception at all? Can there ever be a case in which the mortgagee's lien against the road itself may be postponed? A reference to the opinion of Chief Justice Waite, will show us that this question, if that decision is to be followed, must be answered in the affirmative, and that in certain very exceptional cases the right of the bondholders, even as against the *corpus* of the property, must give way. It is when current earnings, which would otherwise have been used to keep down current expenses, are taken to purchase permanent improvements, and thus to add to the value of the mortgaged property. In such a case the creditors who would otherwise have been paid out of the earnings, would seem to have a reasonable claim against the proceeds of the property, which proceeds have thus been swollen at their (the creditors') expense. After observing that in many cases the *income* of the road, in the hands of the receiver, should be taken to reimburse those creditors whose fund has been used for permanent improvements or for the payment of interest on the bonded debt, and that ordinarily this power of appropriation applies only to the *income* of the receivership and the proceeds of "*moneyed assets*," the chief justice remarks that "cases may arise where equity will require the use

of the *proceeds of the sale of the mortgaged property* in the same way," *i. e*, for the payment of claims for permanent improvements. When the property is in course of administration by the court it not unfrequently happens that the receivers are obliged to take the current income, which might otherwise have been applied to the payment of old debts, for current expenses, and use it for permanent improvements, and as in this way the value of the mortgaged property is increased, there is a manifest equity that the income thus diverted from its legitimate channel should be returned out of the proceeds of the sale of the *corpus*. More than this. The chief justice goes on to say, that "the same may be true *in respect to expenditures before the receivership*." In other words, where, prior to the appointment of a receiver, the income of the road, which would otherwise be used to pay for current supplies and labor, is taken to purchase materials which go to enhance the value of the mortgaged property, the disappointed creditors are entitled to be made whole, at all events to the extent of the fund which has been withdrawn from them, out of income which accrues after the receiver is appointed or even out of the proceeds of the road itself when sold.

But while the chief justice goes to this extent, he is nevertheless careful to base his decision, not upon any general equity on the part of the laborers or material men, and not upon grounds of public policy or expediency, but upon this limited and distinct equity, viz., that the mortgagees have the benefit of that which should have gone to the whole or a part of the general creditors, and that the payment of the latter is not a payment out of a fund which belongs to some one else, but a restoration of what justly belongs to the creditors. "Whatever is done therefore," says the chief justice, "must be with a view to a restoration by the mortgage creditors of that which they have thus inequitably obtained. It follows that if there has been *in reality no diversion there can be no restoration*, and that the amount of restoration should be made to depend upon the amount of diversion."

Of course, such a claim upon the fund realized by the sale of

the *corpus* is exceptional; but we may be sure that as long as the courts do not base its allowance upon too broad a foundation, but confine it within the narrow limits of "diversion and restoration," the right of the material men and laborers will not in any undue form interfere with the legal rights of mortgagees. It was within these limits that the court acted in Fosdick *vs.* Schall, and it was because Schall could rely only upon his general equity and upon general considerations of public policy, and could bring forward no special equity as a reason for interfering with the rights of bondholders, that the court refused his prayer.

It must be remembered, however, that the question of the *amount* of betterments to the road is, practically, a very difficult one to determine. "The very use of these improvements" (to quote from a printed brief which has kindly been sent to me during the last few days) "as well as the rest of the property, involves wear and tear, deterioration and decay; and to compel bondholders to restore to the fund all the earnings produced by the wear and tear, deterioration and decay of the property, and also to compel them to pay in full the prime cost of the thing itself, would be grossly inequitable." It would, in short, be simply to improve them out of their security. If, therefore, this doctrine is to be applied in future it must be with this qualification, viz., that the material men must submit to a proper deduction or discount on their claims by reason of wear and tear.

This ground taken by the Supreme Court is, however, it is submitted, not only the proper rule to apply in cases such as the one then before it, but also furnishes the proper test to make use of when the fund for distribution arises solely from tolls and income. This leads us to the consideration of the limitations under which the *income* of the road in the hands of receivers may be applied to the payment of matured and maturing debts for labor and supplies.

Sufficient, perhaps, has been already said to show that the supply and wages claimants cannot safely have their claims

allowed upon any general principles such as have been advanced in some of the authorities which have been cited. Any one who will carefully consider the learned opinion delivered by Mr. Justice Cofer in Douglass *vs.* Cline will, it is believed, be led to the conclusion that any such general doctrine would logically lead to a distribution of the income in receiver's hands among all the general creditors *pari passu*, for the general equity of the man who loans money to buy supplies and pay hands is just as great and ought to be just as persuasive as the general equity of laborers and vendors of material; but no one has (so far as is known to me) contended that the unsecured creditor for money loaned, has any such equity as would entitle him to interfere, as against a bondholder whose receiver had produced the fund. There must, then, be some *special* equity shown by the laborer or material man. What are these equities? Without professing to give a catalogue of them, there are at least three cases in which the bondholders ought (it seems) to be compelled to recognize the rights of the wages and supply creditors.

Where the receipts of the road prior to the filing of the foreclosure bill have been used to pay for permanent improvements, and the current expenses have remained unpaid, the income which subsequently comes into the hands of the receiver should be used to pay those expenses. This is because the mortgagees have got the benefit of something to which they were not legitimately entitled, and which they ought therefore to restore. Admitting that they are, either by general law, or by statute, or by special provisions in the mortgage, entitled to earnings of the road, it is the net income, not the *gross receipts*, to which they can lay claim. In the Williamsport and Elmira case, Judge Strong pointed this out very clearly, and it was upon this ground that he refused the bondholders' petition to modify the order. This is a case of a diversion of a fund from one class of creditors and its subsequent restitution.

Again, where the receipts have for any reason happened to accumulate immediately prior to the appointment of the receiver, and are turned over to him, this fund should of course

be applied to the payment of maturing indebtedness for labor and supplies. It is (in the case supposed) a part of the *gross*, and not of the *net* income, and the mortgagees have no right to it. This is not a case of diversion of a fund; it is simply the case of its accidental preservation and its subsequent payment to the parties to whom it ought to have gone.

An illustration of this is afforded by the recent decision in the La Moille Valley Railroad Company case (Poland *vs.* The La Moille Valley R. R. Co. *et al.*) by the Supreme Court of Vermont, with a copy of the opinion of Judge Powers in which I have been recently favored. In this case, a bill was filed by the trustee under what was known as a preference mortgage, against the mortgagors and certain lien holders, including bondholders under two other mortgages, and creditors for materials. Among the questions which arose in the cause was whether the creditors for supplies and labor had priority over mortgagees, *quoad* certain chattels which were covered by the mortgages, but which, under the Vermont statute, were mortgaged subject to the lien of such creditors. The Master's report showed that this chattel property had been taken by the receivers; that it had been of sufficient value to satisfy the creditors' claims; that it had been used by the receiver in operating the road, and had been partly consumed and destroyed by such use; and that the residue had been by that use much depreciated in value. Upon this state of facts it was ruled that the creditors for materials were entitled to payment out of the net income earned by the receiver, as in this way alone could they be reimbursed for the loss and deterioration of the property which would otherwise have been applicable to the payment of their debts, and which passed into the hands of the receiver, subject to their rights. "The claims of these creditors," says Judge Powers, "are for current expenses of the road. They should have been paid by the mortgagor out of the earnings. If the earnings had been kept intact, and on the appointment of the receivers had been delivered to them in cash, would not a Court of Equity order that they be first applied in

satisfaction of all back arrearages of expenses incurred by the mortgagor in the operation of the road?" And further on, the learned Judge remarks: "It is to be noted that this application of net income is *merely paying an obligation that equitably rested upon a portion of the property* seized by the receivers, and which has been largely consumed to the advantage of the mortgagee, and thus consumed upon the mortgagee's express request," *i. e.*, by his prayer to have the road operated by a receiver. In other words, the learned Judge does not ground the relief which he administers, upon general equities or upon vague considerations of public policy, but upon the distinct and precise equities which are indicated in Fodick *vs.* Schall.

Still again, where gross income, prior to the receiver's appointment, has been used to pay interest on bonded debt, and the current indebtedness of the road has thus been suffered to accumulate, the net income, subsequently earned by the receiver, should be used to make good the deficiency for current expenses thus created. This, also, is a case of diversion and restoration.

In short, where the gross income has been used, directly or indirectly, for the benefit of mortgagees, and current debts have thus accumulated, there is a special equity on the part of the holders of the latter that the assets of the insolvent corporation should be so marshalled that they may be restored to the rights of which they have been deprived for the benefit of the bondholders.

But, while all these concessions are made to labor-claims, it is respectfully submitted that the courts should go no further, and that the limitations which have been classified above and which have attempted to be deduced from the latest and best considered authorities upon the subject, should not be overstepped. Therefore, where cases arise, in which, prior to the receiver's appointment, current earnings have been faithfully used to pay current debts for supplies and work, but have been found to be insufficient, there ought to be no order for an allowance for the payment of arrears which have thus accumulated, out of income which afterwards comes into the hands of the receiver. The

reason would seem to be plain. In such a case there has been no diversion of funds from one class of creditors to the advantage of another. The mortgagees cannot be asked to restore anything, for they have taken nothing from others. No equity then exists on the part of the wages and labor-claims, except the general equity that every creditor ought to be paid what is owing to him; and in the administration of such an equity (if it can be so termed) as that, it is going rather far to ask the Courts to throw legal rights and priorities overboard.

If the above views are correct, it will be observed that the question of making an order for the payment of amounts due for supplies and labor out of income, must be one, not of arbitrary discretion, but pretty much of *accounting*. If, upon examining into the affairs of the company, the accounts show a diversion of income from current expenditures and its application to the benefit of the mortgagees, to that extent the mortgaged property ought to refund; but if it should appear that there has been no such diversion, then no claim for restoration can fairly be made upon the mortgaged property, and no order for the payment of amounts due and maturing for supplies and wages should be made.

There is also another qualification, which all the cases unite in saying must be attached to the labor and supply claims, viz., that of *time*. The orders in such cases, as is well known, usually provide that only those liabilities which have been incurred within a few months (generally four or six) prior to the appointment of the receiver, shall be entitled to the benefit of the order. The justice of this is obvious, as otherwise there would be an enforced accumulation of arrears of interest upon the bonds, against which the bondholders would have no means of protecting themselves. Hence the laches of the material men and laborers should properly bar their equities.

The third species of property in reference to which the question under consideration is likely to arise, is that which may have been acquired after the execution of the mortgage, but which is nevertheless covered by its terms. It is submitted

that so far as the fund which may be before the court for distribution is made up of the proceeds of after-acquired personal property, its application to the payment of the demands of claimants must depend not so much upon legal priorities as upon equitable rights, and this for the simple reason that it is in equity alone that after-acquired property is supposed to pass by the conveyance, and to be, therefore, bound for the mortgage debt. Possibly this ought to have some weight when in distributing the fund in any given case, that fund is made up partly of the proceeds of such property.

In determining, then, the grounds upon which the rights of material men and laborers may be asserted as against mortgagees, we may conclude

(1.) That considerations of public policy, public convenience, or public safety, do not furnish sufficiently definite and satisfactory reasons for interfering with the rights of bondholders, and that when these are the only grounds upon which the court is asked, in any given case, to give priority to supply and wages claims, the application should be refused.

(2.) That the general rule that he who seeks equity must do equity is applied too loosely, if it is construed to mean that merely because mortgagees ask for the equitable remedy of receivership, they must submit to any conditions which the court may see fit to enforce in view of the supposed meritorious character of later claims.

But (3) that where the special equity of diversion and restoration exists, the bondholders may be fairly compelled to give way to the extent, at least, of restoring the property, which has been diverted for their benefit, to its legitimate channel; and that in so doing the court will be influenced not a little by the three considerations of the *right* of the mortgagees, under the terms of the mortgage, to an immediate possession of the property; of the equitable nature of the mortgagee's title to after acquired personalty; and of the laches (if any) on the part of the material men and laborers in asserting their claims.

Under these rules and with these qualifications it is believed that the courts may administer relief in cases of railroad receivership with some greater degree of precision and some more careful regard to well settled legal doctrines, than has been, in some instances, displayed. Whether this end should be secured by uniform legislation is a subject which deserves attention, but the present discussion of which would seem to be forbidden by the length already reached by this paper.

PAPER

READ BY

HENRY D. HYDE.

Extradition between the States.

Among the many laws relating to the administration of justice, it is doubtful if any one has furnished the occasion for more theoretical discussion, by courts, public men, and writers, than the law of extradition between the several states of the Union, and yet, very little is known of the actual practice under the law, and of what has been really settled. This is largely owing to the fact that the executives of the several states, who are charged with carrying out the provisions of the Constitution, are frequently changed, and that no method has ever been adopted for preserving the records of contested extradition cases, and thereby securing uniformity of practice. In the preparation of this article the executive archives of seven of the states have been examined, but in no instance has there been found anything like a complete record of cases, or a classification of such papers as have been preserved. If each state would preserve all the papers relating to extradition, in files by themselves, and have an abstract of the same published each year, much would be accomplished towards securing a more uniform practice than has heretofore existed.

The whole authority for delivering up a fugitive from justice is found in a few words of the Constitution of the United States, and were such authority wanting it would hardly be for the interest of any state to retain in its midst persons guilty of crime.

As early as 1643, in the Articles of Confederation between the plantations under the government of Massachusetts, the plantation under the government of New Plymouth, the plantations under the government of Connecticut and the government of New Haven, with the plantations in combination therewith, provided for the delivering up of fugitive criminals, and Article 4 of the Articles of Confederation between the thirteen colonies contained a provision similar to that found in the Constitution, which was repeatedly enforced prior to the adoption of the Constitution.

The provision of the Constitution, Article 4, section 2, is as follows: "A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." It is not the purpose of this paper to discuss or review the decisions that have sought to explain this plainly stated provision of the Constitution, nor in detail to recall the many and often heated discussions between the executives of different states in relation thereto, but rather in a brief way to throw some light upon the practice as it actually exists in the different states.

The original draft of this provision as reported by the Committee to the Federal Convention provided for delivering up of any person charged with treason, felony, or high misdemeanor, but the words "high misdemeanor" were stricken out by the Convention, and the words "other crime" inserted.

It was five years after the adoption of the Constitution before Congress passed any law to facilitate the delivery of fugitive criminals, and then only upon the suggestion of President Washington, who was moved to act because of a controversy between the Governors of Virginia and Pennsylvania. This controversy grew out of a demand made by Governor Mifflin, of Pennsylvania, upon Governor Randolph, of Virginia, for the surrender of three persons charged with kidnapping a free negro in Pennsylvania, and selling him into slavery in Virginia.

Governor Randolph referred the matter to his attorney-general, who reported adversely, claiming that the offence was not of such a character as was included in the words "treason, felony, and other crime," and that there could be no delivery and removal until Congress by law had prescribed the manner. Governor Randolph thereupon declined to make the delivery, and Governor Mifflin sent all the papers to President Washington who referred them to Edmund Randolph, then attorney-general of the United States, who gave an opinion differing from that of the attorney-general of Virginia, and thereupon Congress took up the matter, and passed the law of February 12, 1793, Revised Statutes, Sections 5,278 and 5,279, which still remains in force, and has never been changed except in some verbal respects at the time of the revision of the United States Statutes; it is as follows:

"Whenever the executive authority of any state or territory demands any person, as a fugitive from justice of the executive authority of any state or territory to which said person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of the state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

"Any agent so appointed who receives the fugitive into his

custody, shall be empowered to transport him to the state or territory from which he has fled."

By the terms of this law, a demand can only be made for a fugitive from justice who has fled to another state from that in which the offence was committed—and in practice this is required to be proved as a fact separate from the allegations contained in the indictment or affidavit charging the crime.

What constitutes a fugitive from justice has been much discussed, and as only such a person can be delivered up, the question is vital. The question was recently considered with much persistency on both sides, by Governor Robinson of New York, and Governor Bedle of New Jersey, Governor Robinson declining to surrender one Baldwin, for an alleged conspiracy to defraud, on the ground that he was not in New Jersey, but in New York, at the time the alleged offence was committed, and therefore could not have fled from New Jersey, and could not be stopping in New York as a fugitive from justice.

The constitution and law of the United States seems to provide only for the surrender of such persons as have fled, and are fugitives from justice. This provision is essentially different from that usually contained in treaties with other nations, where it is provided that certain criminals found in a foreign country shall be delivered up. The constitution seems to be limited to those persons who actually, and not constructively have been personally present in the state where the crime was committed, and then have fled to, and are found in another state, and does not apply to persons who are merely found in another state, than that in which the crime was committed. At least this view is in accordance with the general practice.

The further question—when is a man who has committed a crime in one state and gone into another state, a fugitive from justice, has also been often discussed; but the general practice is to accept the affidavits, stating the fact that the party claimed is a fugitive from justice, if he has left the state where the offence was committed, since the commission of the offence, without inquiring into the motive that induced him to leave,

but still the fact that he is a fugitive from justice is an independent fact to be proved, and is not inferred from the indictment or complaint and presence of the party claimed, within the state on which the demand is made.

One of the questions raised between the governors of Pennsylvania and Virginia in the case already referred to, was, what offence the term "other crime" included. Many have claimed that it means high crimes or misdemeanors, and the law of the State of Connecticut only provides for delivering up persons charged with treason, felony, or high crimes.

Governor Seward insisted on refusing to deliver up a party charged with slave-stealing on demand of the governor of Virginia, on the ground that the words "other crimes" only applied to such crimes as were recognized by the laws of the state upon which the demand was made, or such as were regarded as crimes by "common consent of civilized nations."

This objection is now rarely taken, and "other crime" is regarded as including all criminal offences other than treason and felony.

The demand or requisition is accompanied by a certified copy of the indictment, or of the affidavit or complaint charging the offence. When the demand is accompanied by an indictment it is usually accepted as proof of the offence, if in general terms it describes the offence with usual allegations of time and place.

If, however, instead of an indictment the demand is accompanied by a complaint or affidavit charging the offence, independent and other proof of such facts as constitute the offence charged, with time and place, is required. As the evidence of the crime charged must be satisfactory to the governor upon whom the demand is made, this, with the question of when a party is a fugitive from justice, has furnished the open door for refusal when for any reason a governor has been unwilling to deliver up the party claimed. The language of the constitution and of the act of the United States, taken literally, makes no exception, and leaves no discretion with the executive upon

whom the demand is made, and yet the practice is universal that the party demanded is not delivered up if he is held in custody, or is under recognizance to answer for any offence against the laws of the state where he is found, or the laws of the United States.

In the famous case of Kentucky *vs.* Dennison, 24 Howard, 66, where Governor Dennison, of Ohio, refused to deliver up on demand of Governor Magoffin, of Kentucky, one Willis Lago, charged with helping a slave to escape from his owner in Kentucky, an application was made to the Supreme Court of the United States for a mandamus to compel Governor Dennison to make the delivery, but the court unanimously held, the opinion being by Chief Justice Taney, that: "If the governor of Ohio refuses to discharge this duty, there is no power delegated to the general government, either through the judicial department or any other department, to use any coercive means to compel him."

Taylor *vs.* Taintor, 16 Wallace, 366, was an action brought upon a bail bond by the treasurer of the state of Connecticut against the principal and sureties, upon the following facts: One McGuire was arrested in Connecticut on a charge of grand larceny. He recognized to appear at the next term of court with two sureties, and being released from custody went to the state of New York. While there he was delivered up to the state of Maine, on a requisition in due form, on the charge of burglary committed in Maine prior to the alleged larceny in Connecticut. The sureties set up in defence that it was impossible for them to produce McGuire as provided in the bond, because of his surrender by the governor of New York to the governor of Maine, and that, therefore, they were discharged; but the court held otherwise, and in a majority opinion of the United States Supreme Court, which seems to be the prevailing form adopted by that court for settling doubtful questions, Mr. Justice Swayne says: "Where a demand is properly made by the governor of one State upon the governor of another, the duty to surrender is not absolute and unqualified. It depends upon the circumstances of the case."

He further says, "Had the facts been made known to the executive of New York by the sureties at the proper time, it is to be presumed he would have ordered McGuire to be delivered to them, and not to the authorities of Maine."

By these decisions it appears that the power and duty to decide each case rests with the executive alone, and to ascertain the practice which has been adopted in the several states, it is necessary to turn to the laws of these states; but before doing so it may be proper to state that the governors, in claiming a fugitive, often seem to use but little judgment in making the request, assuming that the executive upon whom the demand is made will not make the delivery without careful examination, and curiously enough, we found among the executive files of one of the states, private notes which had been sent in two different cases by the governors making the demand, expressing doubt as to whether the parties claimed should be delivered up.

All but eleven of the states have passed laws upon the subject.

In seven of the states, viz.: Illinois, Kansas, Colorado, Arkansas, Mississippi, Missouri, and Georgia, the statutes provide in substance that when the executive of any other state or territory having complied with the requirements of the Act of Congress of February 12, 1793, shall make demand, it shall be the duty of the executive upon whom the demand is made to issue his warrant and deliver up the person so demanded.

Massachusetts, New Hampshire, Wisconsin, Minnesota, Maine, and Connecticut, have laws substantially alike, except that in Connecticut, as before stated, the statute includes only persons charged with treason, felony, or high crime; and in Maine there is no provision for taking the opinion of the attorney-general.

In Massachusetts the law is as follows:

Fugitives from Justice.

SECTION 1. The governor of this state, in any case authorized by the constitution and laws of the United States, may,

on demand, deliver over to the executive of any other state or territory, any person charged therein with treason, felony, or other crime; or may on application appoint an agent to demand of the executive authority of any other state or territory any such offender fleeing from the justice of this state: *provided*, that such demand or application is accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of an indictment, or a duly attested copy of a complaint made before a court or magistrate authorized to receive the same; such complaint to be accompanied by affidavits to the facts constituting the offence charged by persons having actual knowledge of and such further evidence in support thereof as the governor may require.

SECTION 2. When such demand or application is made, the attorney-general or other prosecuting officer shall, if the governor requires it, forthwith investigate the grounds thereof, and report to the governor all the material facts which may come to his knowledge, with an abstract of the evidence in the case, and especially in the case of the person demanded, whether he is held in custody, or is under recognizance to answer for any offence against the laws of this state or of the United States, or by force of any civil process, with an opinion as to the legality or expediency of complying therewith.

SECTION 3. If the governor is satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the commonwealth, to some officer authorized to serve warrants in criminal cases, directing him, at the expense of the agent making the demand, at a time designated in the warrant, to take and transport such person to the line of this state, and there deliver him over to such agent; and such officer may require aid as in criminal cases.

SECTION 4. No person arrested upon such warrant shall be delivered over to such agent of a state or territory until he has been notified of the demand made for his surrender, and had

opportunity to apply for a writ of habeas corpus, if he claims such right of the officer making the arrest. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the attorney-general or other prosecuting officer for the district within which the arrest is made." G. S., ch. 177.

The law of Indiana provides that the governor shall issue his warrant commanding that the fugitive be arrested and brought before a circuit or common pleas judge, who shall ascertain, by the examination of witnesses, the identity of the person arrested with the fugitive demanded, and no citizen shall be surrendered where it shall be clearly proved to the judge making the examination that the alleged fugitive was within the state at the time of the alleged offence in another state; St., 1867.

In Kentucky the governor shall issue his warrant to bring the fugitive before some circuit judge, who is only authorized to determine the question of identity; G. S., ch. 45.

In Alabama an exemplified copy of the indictment or other judicial proceeding must be received as conclusive evidence before the magistrate. Code, §§ 3977–9.

In California the law is substantially the same as in Alabama, except that the receiving of the indictment as conclusive evidence is discretionary; Codes, §§ 14548, 14550.

In Oregon the law is substantially as in California, except that the governor may, if conducive to the public good, deliver up the fugitive even when held in custody upon civil process under the laws of the state; Gen. Laws, c. 41.

In Louisiana the governor may, in his discretion, deliver up a fugitive, and it shall be his duty to require such evidence of his guilt of the person charged as would be necessary to justify his apprehension and commitment for trial had the crime charged been committed within that state; R. S., §§ 1039–40–41.

In Ohio the governor may deliver up a fugitive, provided the application is accompanied by sworn evidence that the party

charged is a fugitive from justice, that the application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt, or of removing the fugitive to a foreign jurisdiction with a view to serve him with civil process, provided also that the application be accompanied by a duly attested copy of the indictment or complaint, such complaint to be accompanied by affidavits of the facts charged by persons having actual knowledge thereof, and such further evidence in support thereof as the governor may require. The attorney-general shall also examine and report upon the case when requested. If the governor decides that it is proper to comply with the demand, he shall issue his warrant and cause the alleged fugitive to be arrested and brought before some judge of the supreme court or court of common pleas, who shall hear the case, and upon proof as to the charge, adjudged by him to be sufficient, shall commit the person claimed to jail, giving notice to the executive making the demand, or his agent; R. S., §§ 95–97.

In Texas the law adopts the words of the constitution; R. S., art. 1022.

In Pennsylvania the alleged fugitive, when arrested, is taken before a judge of a court of record, who is limited in his enquiry to the question of identification, and it is made unlawful otherwise to take a party out of the state on a criminal charge, even though he may waive the proceedings provided for by law; Purdon's Dig., p. 2108.

There have been repeated instances where governors have decided to deliver up alleged fugitives, and have issued their warrants of arrest, and then, upon receipt of further information, have revoked the same, and this right of revocation was affirmed in Work *vs.* Carrington, 34 Ohio State Reports, 64.

The general assembly of Ohio, on March 25, 1870, adopted a "joint resolution relative to the surrender of persons charged with treason, felony, or other crimes," as follows, which is:

"Whereas, The clause in the Constitution of the United

States, requiring the surrender of a person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, was intended to subserve only great public interests, and not to apply to trivial offences, or to be made subservient to private interests by being used to enforce the collection of debts, or to remove the citizen of any state into a foreign jurisdiction that he might there be served with civil process.

"And whereas, Great abuses have recently been perpetrated in this regard against the citizens of the state.

"And whereas, By the practice of all the states, a discretion has been recognized as proper to be recognized by the executive authority of each state, both as to the cases in which a requisition shall be made for the surrender of an alleged fugitive, and as to those in which the demand shall be granted, and it is proper that this discretion should, as far as possible, be limited and defined; therefore

"*Resolved by the General Assembly of the State of Ohio,* That the executive authority of this state in its action under said clause of the Constitution of the United States should, in the opinion of the general assembly, be governed by the following rule, both in making requisitions on other states, and in allowing requisitions by other states on this state, namely: No requisition shall be made or allowed for an alleged fugitive, unless the governor be clearly satisfied that the requisition is sought or made in good faith for the punishment of an offence within the proper meaning of the said clause of the constitution, and that it is not sought or made for the purpose of collecting any debt or pecuniary mulct, or for the purpose of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process."

In many of the states a series of rules have been adopted and printed regulating the practice, and which are gradually

tending to secure a uniformity of procedure in the different states. In a note are the rules of Vermont and of New York.*

*STATE OF VERMONT, EXECUTIVE DEPARTMENT,

————————, 187 .

SIR:—The attention of state's attorneys, sheriffs, and county clerks is called to the requirements embraced in the following regulations:

To avoid the frequent irregularities and defects in applications to the governor for requisitions on the governors of other states for the surrender of fugitives from justice, the following rules have been adopted by this department, and will be strictly enforced, and any application not complying with them in all respects will be rejected, without inquiry into its intrinsic merits.

Applications for requisitions should be made by the state's attorney, who must certify that he approves of the application; that the party complained of is a fugitive from justice, and he believes is at the time in the state of ————————; that he fled from this state before arrest could be made, and that the ends of justice require that he should be brought back to this state for trial.

If the application is made upon an indictment, a certified copy thereof must be furnished by a clerk of the court in which it was found. If upon affidavits, the qualification of the magistrate before whom they are taken must be duly certified, and the magistrate taking them must certify, that in his opinion, the parties making them are to be believed.

The state's attorney must further certify that if the facts stated in the affidavits are true, they would, in his opinion, result in a conviction.

It must also be affirmatively stated whether any application for a requisition for the same person for an offence arising out of the same transaction has been previously made, and if a prior application has been made any new facts appearing in the papers must be specially pointed out

The state's attorney must also name the state upon which the requisition is asked, and a proper person to whom the warrant is to issue, and must certify that such person has no private interest in the arrest of the fugitive.

Where any statements are made on information and belief, the statements so made must be distinctly defined, and the sources of information and grounds of belief must be set forth in detail.

The purpose of granting a requisition is to aid in administration of the *criminal law*. No requisition will be issued in any case to assist in collecting a debt or enforcing a civil remedy against a person who has left the state. In all cases of false pretences, embezzlement, conspiracy, and similar crimes, the strongest affirmative evidence will be required that the real object is not the collection of a private debt.

If a requisition shall have been improperly or unadvisedly granted, there will be no hesitation in revoking it.

If the offence is not of recent occurrence, sufficient reason must be given why the application has been delayed.

If known, it should also be stated, whether the accused has ever been a resident of this state, or has only been transiently here.

In all cases of rejected applications for requisitions the papers will be retained in this department.

The governor has no power to require the surrender of fugitives who have taken refuge in the British provinces.

Duplicates of all papers necessary upon the application must be furnished, that one set may be retained in this office, and the other attached to the requisition, though only one set need be certified. This requirement is designed to embrace the formal application or letter of the state's attorney.

The rules of many of the other states are very similar to those already quoted, and require in substance that the demand be made in good faith for the punishment of crime, and not for the purpose of collecting a debt or of removing the alleged fugitive to another state with a view to serve him with other process.

In no case can a requisition be granted at the same time for the same offender upon the governor of more than a single state.

Respectfully,

HORACE FAIRBANKS,

Governor.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,

Albany, February 16, 1874.

The following regulations are adopted by the Governor in reference to applications for requisitions, and mandates upon requisitions.

Applications must come from District Attorneys, and be by duplicate original papers, except the indictment, which may be by a certified copy.

1st The District Attorney must certify that in his opinion the ends of public justice require that the criminal be brought back to the state for trial at the public expense, that he is content that such expense be a county charge, and that he believes he has within his reach, and will be able to produce on the trial, the evidence necessary to secure conviction.

2d. He must further name the state upon whose executive the requisition is to be made, and name a proper person as agent, having no private interest in the arrest of the fugitive.

3d. If there has been any former requisition for the same person growing out of the same transactions, it must be so stated, with explanation of the reasons for asking for a new requisition.

4th. If the criminal is known to be under arrest, for any other offence, it must be so stated. If an indictment has been found, a certified copy of the same must accompany the application.

Also, there must be by affidavit positive proof that the criminal has fled from the state and the justice thereof, or proof of facts and circumstances warranting such conclusion, with a satisfactory explanation of delay in prosecution, as other matter calculated to excite suspicion of want of good faith in the proceeding. Also, proof that the criminal has taken refuge in the state on whose executive the demand is to be made.

If known, it must appear whether the criminal is a resident of this state, or only transiently here.

Matters stated on information and belief must be stated with the source of information and belief; and mere general allegations of law and fact must be avoided as much as possible.

In cases where no indictment has been found, there must be in addition to the proofs above mentioned, proof by affidavit, taken before a magistrate, of the facts and circumstances constituting the crime.

If the crime charged be forgery, the affidavit of the person whose name is alleged to be forged must be produced, or a satisfactory reason given for its absence.

In all cases the official character of the officer taking the affidavits must be duly certified.

District Attorneys will be held to the strictest responsibility to see that this process is not used for the purpose of collecting debts, or for other private purposes, especially in false pretence, embezzlement and forgery cases.

A great number of cases could be cited, going to show, as the above rules of practice indicate, that the executives of the different states do, as a matter of fact, exercise a large discretion in the surrender of alleged fugitives from justice, a discretion similar to that legal discretion which courts of equity exercise, and we think it may be said that the general practice in false pretense cases is to exercise a very large discretion, and generally to refuse to make the delivery, especially if considerable time has elapsed since the offence was committed and debts exist in connection with the alleged offence, for the reason that criminal proceedings are apt to be instituted with a view of collecting debts. It may be said that a requisition for an old offence is liable to be refused, and a satisfactory reason for the delay will be required. Many cases which have arisen might be cited and compared, but the general results given, it is believed, will be of more interest than numerous and conflicting details.

There is much that yet remains to be done by each of the states in completing, arranging, and preserving their records, and in making public the practice actually existing, before that uniformity of practice can be arrived at which ought to exist; and it is hoped that some state before long will invite the co-operation of the other states, and thereby secure the desired result.

If it is discovered that this process is being abused, or has been inadvertently granted, there will be no hesitation in revoking it.

Requisitions will be mailed directly to the governors upon whom made, unless there be very special reason for doing otherwise. The agent's authority will be sent to the District Attorney for delivery, who must see to it that the agent makes return of it, within a reasonable time, to the Executive Department, with a statement of the manner in which his duty has been discharged.

Mandates upon requisitions from other states will not be granted unless the requisition is supported by proofs conforming substantially in material matters as to the statements about the crime, and the manner of the criminal's departure from the state, and the good faith of the prosecution to the requirements of the foregoing regulations in similar cases.

Mandates will be mailed directly to the Sheriff of the county where the criminal is supposed to be. He will be directed in all cases to allow the man arrested a reasonable opportunity to assert before delivery any legal rights he may have in the premises.

JOHN W. DIX,
Governor.

REPORT

OF THE

TREASURER.

Saratoga Springs, August 18, 1880.

The Treasurer submits the following Report of the finances of the Association for the year ending Tuesday, August 17, 1880:

Dr.

Balance from last account,	$734 87
Cash received, annual dues, 1878–79,	50 00
" " " 1879–80,	1,520 00
" " " 1880–81,	5 00
	$2,309 87

Cr.

Cash paid as follows:

1879.			
Aug 21.	Incidental expenses of Second Annual Meeting,	$16 95	
21.	Secretary's expenses past year,	4 75	
21.	First annual dinner,	428 00	
21.	Rent of Parlor, Grand Union,	30 00	
29.	I. H. Munns, stenographer,	30 00	
Nov. 24.	Printing circulars,	7 25	
26.	Postage, express, etc.,	14 25	
Dec. 24.	Postage, express, etc.,	5 71	
26.	William A. Butler, *Chairman*; Expenses of Committee, Jurisprudence and Law Reform,	11 63	
1880.			
Jan. 19.	Postage on Pamphlets,	77 65	
23.	Printing Proceedings, etc., Second Annual Meeting,	554 60	
23.	Printing additional copies of Report of Committee,	4 00	
24.	Receipt file,	20	
	Amounts carried forward,	$1,184 99	$2,309 87

	Amounts brought forward, . . .	$1,184 99	$2,309 87
Jan. 26.	Postage and express on Pamphlet, Proceedings Second Annual Meeting, ...	29 28	
Feb. 7.	Printing additional copies of Addresses, Reports, etc., ...	78 73	
Mch. 18.	Printing circulars, ...	5 00	
Apl. 2.	Services of clerk in mailing pamphlets, etc., .	44 00	
17.	Printing envelopes, ...	3 25	
17.	Postage, ...	2 00	
June 2.	Clerk to Treasurer, ...	50 00	
25.	Expenses of sub-committee to Saratoga to arrange for Third Meeting, ...	15 45	
July 20.	Postage on Notices, ...	20 00	
Aug. 3.	Secretary's bill of expenses, ...	16 94	
9.	Cash paid J. Wagner by order Executive Committee, ...	34 00	
17.	Porterage, ...	25	
			$1,483 89
	Balance on hand, which consists of		
	Cash deposited in Philadelphia Trust, Safe Deposit and Insurance Company, . . .	$810 52	
	Cash in the hands of the Treasurer, . . .	13 46	
			$825 98

Respectfully submitted,

FRANCIS RAWLE,
Treasurer.

Audited and found correct.

Saratoga Springs, August 18, 1880.

WILLIAM ALLEN BUTLER,
O'BRIEN J. ATKINSON,
Auditing Committee.

REPORT

OF THE

FOURTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 17th, 18th, and 19th, 1881.

PHILADELPHIA:
E. C. MARKLEY & SON, PRINTERS, No. 422 LIBRARY STREET.
1881.

CONTENTS.

PAGE

Proceedings of the Meeting, ... 5

Treasurer's Report, ... 87

List of New Members, ... 89

Constitution, ... 95

By-Laws, ... 99

Officers, ... 102

Committees, ... 107

Members, ... 109

Obituaries, ... 124

President's Address, ... 141

Address of Clarkson N. Potter, ... 175

Paper by Thomas M. Cooley, ... 199

Paper by Samuel Wagner, ... 223

Appendix to the Report of the Committee on Legal Education and Admissions to the Bar, ... 237

Table of Requirements for Admission to the Bar, ... 302

Index, ... 305

PROCEEDINGS OF THE FOURTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION,

HELD IN

Putnam Hall, Saratoga Springs, N. Y., August 17th, 18th, and 19th, 1881.

1. LUKE P. POLAND, of Vermont, Chairman of the Executive Committee, called the meeting to order at half past ten on Wednesday morning, August 17th, and introduced EDWARD J. PHELPS, the President of the Association, who delivered the opening address. (*See Appendix.*)

2. The regular order of business was then proceeded with, and the Chairman of the General Council made a number of nominations for membership. All of those nominated were duly elected. (*See List of New Members at the end of the Minutes.*)

3. Simeon E. Baldwin, of Connecticut:

MR. PRESIDENT:—I desire to interrupt the regular order of the business of the session a few moments, by moving that a telegram be sent to a similar association to our own, meeting to-day at Cologne, in Germany—the "Association for the Reform and Codification of the Law of Nations." I dare say some of the gentlemen in the room may have been present—I know some have—at the previous meetings of that association. It was formed about eight years ago, and has a membership as wide as Christendom—wider than Christendom—for it comprehends

natives of Japan and other countries of the East, all interested in giving precision and advancement to International Law, both private and public. During the past year, as will be stated in the report of the Executive Committee, a correspondence has taken place between that body and the officers of this, which resulted in our sending delegates to the meeting of that association, held this week at Cologne; and as our objects are so similar to theirs, and as this is the first year in which the two bodies have been in correspondence, it seems to me it would be a graceful and friendly thing if we were to send them a telegram of good wishes, and I move you, sir, that the telegram I now read be cabled to Cologne:

"To the 'Association for the Reform and Codification of the Law of Nations,' Cologne.

"*Saratoga, August 17, 1881.*

"The American Bar Association (now in session), hoping to further the advancement of uniformity in the laws of this country, wishes you success in your efforts to advance uniformity in the laws of the world."

To be signed by yourself, Mr. President.

James O. Broadhead, of Missouri, seconded the motion.

J. Hubley Ashton moved to amend, by expunging the last four words, "laws of the world," and substituting therefor the words, "law of nations."

Amendment accepted.

The motion so amended was adopted, and the message was sent by cable to Cologne on the same day.

4. Alexander R. Lawton, of Georgia, moved that the thanks of the Association are due, and are hereby tendered, to our President, for the instructive, discriminating, able, and eloquent address this day delivered.

Seconded by David Davis, of Illinois.

Luke P. Poland put the motion to the Association, and it was unanimously adopted.

5. The next business in order was the election of the General Council, upon a call of the several states in alphabetical order. (*See List of Officers at the end of the Minutes.*)

The Secretary's Report.

6. Edward Otis Hinkley, Secretary of the Association, then made his report, as follows:

MR. PRESIDENT:—One hundred and eighteen new members were elected last year. The printed report of last year shows 553 names, but I am informed by the Treasurer that there are in full membership about 375. There are unrepresented in this Association five states. Texas (from which state a delegate is present, Mr. Robert G. Street), Oregon, Minnesota, Nevada, and Colorado have no members in the Association.

In the proceedings of last year, on page 27, will be found a resolution directing the Executive Committee to "secure for the Association a central place for the transaction of the business in charge of the committees, and otherwise to facilitate the operations of the Association, and that the Executive Committee be authorized to procure a suitable room in the city of New York, or in the city of Philadelphia, for the use of the Association, as its central office, and to make such arrangements as may be necessary, in their judgment, for this purpose."

This resolution was offered by Mr. Wm. Allen Butler, of New York, a member of the Executive Committee, and he procured for the use of that Committee one of the rooms of the New York Bar Association, and the Committee met there in February last, it being found necessary to have such a meeting in the interval between the annual meetings of the Association.

The matter referred to by Mr. Baldwin—one of the Executive Committee—in respect to the Association for the Reform and Codification of the Law of Nations, has received attention by the Committee, and I was directed, as Secretary, to forward to that body our publications, and to request an exchange of theirs, if agreeable to them. I fulfilled that duty, and sent

ours and received theirs. It may be of use to some of the gentlemen connected with this Association to look at these reports, and they are in my hands, at the service of gentlemen of this Association. I have not brought them with me, but have them at home, and will send them by mail to any member who wishes to read and return them. In pursuance of the resolution then passed, the Chairman of the Executive Committee also sent delegates to Cologne, as to which he will report.

There are on the Minutes of the last meeting some matters to which the attention of the Association may rightly be called. On page 25, reference is made to a motion, which was adopted, giving further time as to some matters in charge of the Committee on Jurisprudence and Law Reform. Mr. Butler, Chairman of that Committee, is now in Europe, and possibly at this moment in attendance at the meeting of the association to which we have sent our good wishes.

On pages 45 and 46 will be found what is expected at this meeting from the Committee on Legal Education. I refer to the resolutions offered by Mr. Ashton, to be found on those pages.

Another motion was adopted last year, "that the committees which have not as yet reported be, and hereby are, requested to report in writing at the next meeting of the Association."

I would say, Mr. President, that this is a matter coming particularly under your charge as presiding officer of the Association. It sometimes happens that we have gentlemen on committees who are not in a position to be able to discharge their duty, or who are unwilling to do it, and some changes ought to be made in regard to committees that have not yet reported. The Committee on Commercial Law is the one in reference to which the resolution was directed, and I think it not improper, in my office as Secretary, to call attention to the neglect of committees to report.

It may not be out of place for me, as Secretary, also to suggest that there seems to be a need for another committee—namely, on Constitutional Law. We have a Committee on In-

ternational Law, and to that Committee might perhaps have been confided some matters of correspondence with the Association for the codification and reform of the Law of Nations. But on the subject of Constitutional Law—a matter of the greatest importance in these United States—we have no committee. I make this suggestion in order that gentlemen who may think it worthy of notice may take it up.

Last year ninety-seven gentlemen, members of the Association, signed the register which now lies on the table before me. It is very desirable that every member in attendance should sign the register as a means of information to the Chairman and Secretary, and other gentlemen of the Executive Committee, in the performance of some of their duties.

In the business of last year, Mr. President, on page 46, is a motion of E. J. Phelps, which was adopted, viz.: "A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the Committee, be proper."

I particularly call the attention of the Vice-Presidents in the several states to that duty, in order that I may be able to perform mine; for without that information, received from the Vice-Presidents, of the deaths of members within their respective states, and a suitable obituary notice, it will be impossible for me to discharge my duty in this respect. I think it proper to say, that upon consultation with the Executive Committee, and other gentlemen, it was thought best that these obituary notices should not be read here.

Among those whose decease has come under my attention, I may mention the names of Thales S. Linthicum, of Maryland, who died 28th June, 1880.

Origen S. Seymour, Ex-Chief-Justice of Connecticut.

Calvin G. Child, of Stamford, Connecticut.

La Fayette S. Foster, of Norwich, Connecticut.

Probably a number of others might be mentioned, but I wish their names might be sent to me in writing.

Thomas Hoyne, of Illinois, suggested the death of Mr. O. H. Browning, of Illinois, and informed the Secretary he would furnish an obituary notice of the deceased.

David Davis, of Illinois, inquired how much of a notice would be acceptable.

The Secretary said:

One page of the printed report, equivalent to two pages of ordinary foolscap, I suppose, would be considered reasonably sufficient to cover a notice of the death of any of the members.

Upon motion, the report of the Secretary was accepted.

7. Francis Rawle, of Philadelphia, Treasurer, then made a report of the funds of the Association (*see Appendix*), and stated that it had been duly audited and found correct by the Auditing Committee, duly appointed under By-Law IX., viz.: Alvan P. Hyde, of Connecticut, and Charles N. Davenport, of Vermont.

8. The report of the Executive Committee was then presented by its Chairman, Luke P. Poland, of Vermont, as follows:

MR. PRESIDENT AND GENTLEMEN OF THE ASSOCIATION:—I have prepared no written report; indeed, there seemed no occasion for it, for there is very little for the Executive Committee to say. We have attended to the ordinary work of the Committee, necessary to be accomplished previous to the annual sessions of the Association. We have found it necessary each year to have a special meeting of the Executive Committee in the winter. Once we met in Philadelphia, and last winter and the winter before, in New York. The only matter of special interest to mention here is our action in reference to the selection of some delegates to the Association now in session in the city of Cologne, for the Reform and Codification of the Law of Nations.

We could not call a special meeting of the Association to see whether they would send delegates, and if so, to elect them, and we came to the conclusion that the Executive Committee

would not be charged with usurpation if we took it upon ourselves to select delegates. We thought it was desirable to do so, and believed our action would meet the approval of the Association.

The Executive Committee therefore appointed as delegates—

William Allen Butler, of New York.

Allen G. Thurman, of Ohio.

Wm. M. Evarts, of New York.

Horace Fairbanks, of Vermont.

We duly commissioned those gentlemen to represent this Association at Cologne, and we feel quite confident our action will meet your approval.

The report of the Executive Committee was accepted, and their action approved.

The Association then adjourned until eight o'clock P. M.

Wednesday Evening Session, August 17.

Meeting called to order at eight o'clock, by the Chairman.

9. Luke P. Poland, on behalf of the General Council, then offered the names of several gentlemen for membership, all of whom were duly elected.

(*See List of New Members at the end of the Minutes.*)

The President then announced that Thomas M. Cooley, of Michigan, who was unable to attend the session, had forwarded his paper, "The Recording Laws of this Country," and that it would be read to the meeting.

Edward Otis Hinkley, Secretary, then read the paper. (*See Appendix.*)

10. Richard Vaux, of Pennsylvania:

Mr. President:—In the report presented this morning by the Secretary, which was approved by this Association, it was suggested that there should be a Committee appointed on Constitu-

tional Law, and it occurred to me that was a reasonable and desirable object. I rise to ask the liberty to offer this resolution, requesting the President to appoint such a committee. I move you, sir, that the President of this Association appoint a Committee on Constitutional Law, of which Committee the President shall be Chairman.

The President:

The Chair informs the gentleman that the resolution should take the form of an amendment of the constitution which provides for the standing committees; a resolution for such an amendment will be in order. The constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting.

Mr. Vaux:

Then to avoid any doubt about the matter, I move that the constitution be amended so as to take provision for the appointment of a Committee on Constitutional Law.

Thomas J. Semmes, of Louisiana:

I would like to ask the gentleman from Pennsylvania what practical object can be obtained by the work which may be confided to such a committee?

Mr. Vaux:

The purpose I had in view was to carry out the suggestion of the Secretary, in his report approved by the Association this morning. I understood, from the fact that the report was accepted, that the suggestion contained in it met the approval of this Association, and fearing the matter might be overlooked, I took the opportunity to offer this resolution to bring the important matter to the consideration of the Association for their action. In the report that was made, it was stated that there ought to be such a committee, and I concur in that statement. Constitutional law is, to us, as important as international law, and it seems to me that the perfectness of the standing committees would not be complete until we had a committee on constitutional, as well as international, law.

Mr. Semmes:

I can understand that this Association can have some influence on legislation, and even upon international law, if you choose; but the benefit of it, or the importance of it, in respect to the constitution, I am unable to see. In what way can the constitution, either of the United States, or of the several states, be influenced by the working of such a committee? I don't think that our action, or our opinion, would have much influence in respect to the constitution of the states, and I doubt whether anything we could say, or suggest, would bring about any constitutional amendment of the Constitution of the United States. It is for these reasons that it seems to me impracticable to have such a committee appointed. It might lead us off into a discussion of the constitution. Theoretically, perhaps, there might be no objection to such a committee, but it seems to me it could not be very practical in its workings; so unless our Secretary can point out any useful purpose to be attained by this committee, I should hesitate to support the motion, merely upon the ground that I can see no beneficial result to be derived from it.

Edward Otis Hinkley, of Maryland:

Mr. President:—The remarks made by you in your address this morning, I think, afford good ground for believing that there are, in the body of law, questions which may be called constitutional; they are sometimes called organic; they are the great principles of the common law, reduced in England, to be sure, whence we derive the common law, and whence we derive our notions of constitutional law—reduced in that country into the form of certain great charters of the liberties of the people, brought about after many struggles for such a result; but if the provisions of those great charters had not been written, I quite agree with you that there are underlying principles of constitutional law, and it is essential to our well-being that they should exist. The people must preserve them. Lawyers in particular must see to it that the fundamental principles of con-

stitutional law are preserved in these United States, otherwise the people will be in danger of losing their liberties, and all our struggles about minor questions will be of little consequence. Now, as to the question of our changing the constitutions of the several states, or having anything to do with them in that respect, a few words will answer that objection.

We all agree, doubtless, that there is a branch of the law known as constitutional law, and great questions arise under that branch; questions wholly irrespective of the modes and forms in which the several states work their machinery, under their constitutions. It is to such points that I would like to have the attention of the lawyers of the United States directed—to the great underlying principles of law from whence we derive other subordinate branches of the law. Perhaps I cannot illustrate the subject better than by saying this: that there is an analogy between our physical machinery and the machinery of the law. There is a better analogy which I will take, and that is of God's work, not man's—that is, the human frame. The natural body is a fair sample of what the government should be of a body politic. If you have a body, you must have a head, and it may not be inappropriate to say that there must be brains in the head, otherwise the body will go wrong; there must be a strong right arm, and if there is not bone and sinew in the man what strength will the body have? These are slight analogies; and I say there is constitutional law wholly irrespective of the particular forms of the constitutions of the several states. For example, every state has a government; a chief executive, who must execute the law. Now, passing upon what are laid down as the powers of the executive under the constitution of any state, and going back to the fundamental principles of the English law, and of the necessities of the existence of a state, and of its having an executive head, we may fairly consider the question of what are the fundamental prerogatives of the executive, or its necessary functions irrespective of any form of our constitutions in these United States, or the method of working under them. For example, constitu-

tional law makes it the duty of the chief executive, however he may be chosen, or whatever may be laid down in the constitution, to execute the laws, and to do so with all the power and force of the state. Now, suppose a constitutional question should come up as to the relative duty of the executive and legislative bodies? And the gentleman who wrote the paper I have just read (Judge Cooley) has given us in one of his treatises some admirable illustrations of what legislative bodies may do, and what they may not do. What I would like to see considered by this body, if it is deemed reasonable and proper, are those underlying principles of constitutional law which have nothing to do in particular with the form or forms of any one of the constitutions of the several states, or of that of the United States. Constitutional law is necessary to the existence of a state; and, it seems to me, is as proper a subject for consideration by a body of lawyers as commercial or international law. I think that will sufficiently explain what I had in view when I made the suggestion in my report.

Henry Hitchcock, of Missouri:

Mr. President:—I think, as the question offers itself to our consideration, it is simply a matter of expediency whether the Association makes the appointment of this committee; and it appears to me to be hardly necessary, in this view, to discuss the question whether or not there are such constitutional questions, or whether we understand them in the sense in which my friend from Maryland, Mr. Hinkley, has just spoken. If we do not need it; if, through the committees now provided, all the necessary machinery is in use to handle the Association, it seems to me to be superfluous to appoint any additional committee. Nor does it appear to me that there is any necessity for such a committee to meet the exigencies suggested. By the term "constitutional law," in this country, I understand those legal questions which arise upon the discussion of those particular written instruments, whose character is, in this country, that they are fundamental and permanent laws, not

subject to repeal by the ordinary legislative bodies. But at the same time, I suppose we all know that in the sense in which it has been used by the gentleman from Maryland, constitutional questions may arise at any day or any moment on a statute. If you take the question of unreasonable search—that is one of the constitutional questions—upon provisions found in all the states but one. Questions may arise calling for the application of that principle to a given state of facts; they may arise upon the statute, or without a statute, as I remember such a question did arise once.

Now, is it true that we can sufficiently discuss questions of that kind? If we cannot refer to our standing committees such questions as may be considered constitutional, there is then perhaps a necessity for such a committee. But so far as the constitutions of the respective states are concerned, and the Federal Constitution, it does not seem to me likely that this body would be called upon to discuss the desirableness of retaining or adding this or that principle to existing constitutions. It is much more likely that we shall only be called upon to discuss such principles (assuming there are recognized constitutional principles) in their application to statutes existing or to be enacted. If that be so, then it would seem that the committees we have are sufficient to meet any question that might arise. I cannot conceive of any question likely to arise, and to be discussed here, that would not come within the province of committees already existing, and I cannot therefore see the necessity for the appointment of any additional committee.

Mr. Vaux:

I do not desire to discuss this question, but only to suggest one thought. The Supreme Courts of all the states are continually called upon to determine with reference to certain acts of the assemblies of those states, and to pass upon the question of their constitutional validity, and it is opening up a very large field for judicial inquiry. I think it must come in course of time,

and early too, before this Association, to consider many of this class of decisions, and the subjects upon which those decisions are based; and therefore, for that reason alone, if for no other, I think such a committee should be appointed. We have other standing committees to which we refer subjects, perhaps of far less importance, and therefore I took the liberty of presenting this matter for the consideration of the meeting.

Mr. Hitchcock:

I beg the forbearance of the Association to add another word, that is—whether it is not expedient for us to take some care that in the course of the deliberations of this body we shall not be betrayed into going outside of its proper province. For one, I am not inclined to think it would be wise for us to undertake to assume the functions of those courts whose decisions upon constitutional questions are important because they are authoritative. I can see a very large field of usefulness in this body in such discussions as are clearly within its province; discussions such as are fairly illustrated by the paper last read—suggestions of an advance in existing laws, of improvements where they are necessary, and of recommendations to legislative bodies; discussions upon questions which are comparatively new, and which are taking shape in the mind of the profession.

But if it be proposed that a part of our debates and our efforts shall take the direction of undertaking to pass upon existing constitutional questions which cannot be decided, to any useful purpose, except by those whose decision carries weight and authority, then it seems to me there is a possibility of opening the door for action on our part, which must necessarily be ineffectual, and will probably render us liable to the charge of usurping an authority which we do not possess, and which it may be well to avoid.

M. G. B. Swift, of Massachusetts:

Mr. President:—I suppose one of the objects for this Association to attain, is to bring about, as nearly as possible, a

uniformity in the statutes of the different states. I suppose the suggestion of our Secretary this morning, in his report, concerning this Committee on Constitutional Law, simply meant this: that the duty of the proposed Committee, so far as possible to do so, should be the assimilation of our different state constitutions. Not to endeavor to harmonize the statutes of the various states, nor to influence the decision of any Supreme Court of a state. But the idea is this, as I understand it: that this Committee on Constitutional Law shall attempt to do for the constitutions what we, as an Association, are attempting to do for the statutes of the various states. I do not think that can be deemed an interference with the exclusive right of any court, or of the rights of the people of any state. In that view of the question it seems to me very judicious and helpful to have a committee of that kind appointed.

Robert G. Street, of Texas, spoke in opposition to the resolution. If such a committee were appointed, in his opinion, no other duty could devolve upon it than to suggest changes and amendments of the constitutions—Federal and State. Such action would not be becoming on the part of the Association; it would not receive endorsement. If that were not the object to be served by such a committee, the only other views of its action were those suggested by the last speaker, namely, the attainment of uniformity in the several constitutions, and the subject of the interpretation and construction of principles of the constitutions. He did not suppose it was the intention of the Association to recommend to the courts of the land any particular line of decision in respect to any particular constitutional provision. If any gentlemen of the Association desired to express their thoughts upon what seemed to them a proper course to adopt on any questions of that nature that might arise, such gentlemen could reduce their opinions to paper in the form of a resolution, or in the shape of the essays annually presented. If such resolutions, or essays, received the approbation of the Association, they would appear on the record as the expression of the Association, which could declare itself in

that way. But there did not seem to be any occasion for the appointment of a committee; it could not contemplate seriously the amendment of the constitutions of the several states with a view to their uniformity; nor, on the other hand, could such a committee make a recommendation to Congress as to the particular construction of existing constitutional provisions.

He considered the adoption of the resolution inexpedient.

Asa Iglehart, of Indiana:

Mr. President:—I desire to make a single suggestion. I think that the proposal to appoint a committee upon this subject is very clearly beyond the scope, purpose, and object of this Association. As I understand its objects, they are, so far as may be, to promote uniformity in legislation in the different states; to elevate the standard of the profession, and to promote generally the interest of the legal fraternity, and the administration of the law. Any subject within the range of jurisprudence, whether it be constitutional law, or common law, or the statutes of the several states, or the Constitution of the United States, or of the individual states—any of these subjects are proper matters of discussion here, as suggested by the member from Texas, or of an essay; but as I understand it, the standing committees here are confined to those subjects upon which we expect to take affirmative action. It is not expedient to take, nor can we take, such affirmative action in the direction of constitutional reform, whether the principles of any constitution were vicious or beneficial in their application. Therefore, I think a step in that direction is a step in the wrong direction; at all events, it is a step beyond the scope of this Association, and for that reason, I hope the resolution will not pass.

Thomas T. Gantt, of Missouri:

I am very much of the opinion of the two gentlemen who have last spoken. I particularly coincide with some remarks that fell from the gentleman from Texas.

I do not understand that there is a wide distinction, or any necessary distinction, between constitutional principles and statutory principles. To be sure, when we speak of a constitutional

principle, we generally understand a rule which is to govern legislation, rather than specific legislation upon a particular subject. As, for example, it is provided in some constitutions, but by no means in all, that no legislature shall have the power to legislate retrospectively; the constitution says that no state shall pass an *ex post facto* law; but that has been long settled to refer to a retrospective criminal law, and not to govern retrospective legislation which concerns contracts only.

A state constitution is otherwise called an organic law; the body of statutory law is framed by the legislatures in pursuance of that organic law, and a constitutional question arises when it is supposed that an act of the general assembly is in conflict with the acts of the convention which framed the constitution. If the question were whether a legislative act was in conflict with some other legislative act, and if it were ascertained that a particular legislative act *was* in conflict with some *other* legislative act, then we would inquire as to the dates *of the* respective acts, because the last act repeals the former, if contrary to it; but if the former act be a part of the organic law, the last act is simply inoperative, because the legislature possesses no power to form any provision in contravention to that fundamental organic law. The state constitution and the United States Constitution is in this respect the same thing. These constitutions say that a legislature shall not do this or that. All these constitutional provisions are of a negative character—that the body to whom general legislative powers are committed shall not exercise those powers in certain enumerated cases, or except in a certain specific manner; but the provisions of almost every constitution in the land might be embodied in an act of the legislature. The Bill of Rights, *Magna Charta*, and others—all these were acts of the legislative body of Great Britain, and I suppose no gentleman will deny that the Parliament of Great Britain, if so minded, might to-day, or to-morrow, repeal any provision of *Magna Charta*.

Mr. Hinkley, of Maryland:

Not without a revolution.

Mr. Gantt:

It would not be a revolution, either. Whether the people would revolt against it, whether they would choose to rebel against the exercise of parliamentary power, is another question. But the repeal of *Magna Charta*, I say, under correction, would not be a revolutionary act. It would be a highly injudicious act; it would be, I might say, almost an act of madness, but not revolutionary. It would be inexpedient and foolish, and if you will, it would be almost insane, but it would not be revolutionary; for revolutionary I understand to be an overturning of the established constitution, or doing something which the existing constitution does not permit you to do; but I know of no provision of law which hinders a body to whom a power is confided from exercising that power.

I apprehend that the subject intended by the mover of the resolution is already sufficiently covered by the existence of a committee having charge of the general science of jurisprudence, and jurisprudence embraces as well the organic law, as the statutory, and the principles of the common law, and of the civil law, so far as they are part of the system which our courts administer, as the provisions that are found in the acts of our legislatures, or in the organic law which we call our constitution.

Nathaniel W. Ladd, of Massachusetts:

Mr. President:—I desire to suggest a few words. Constitutional law is the fundamental law of any government; it should not be, cannot be, readily changed. I think our fathers, in establishing this Federal government, and the various state governments, in the early history of this country, were very careful to hedge about constitution-making by all sorts of muniments, so as to prevent any injudicious or hasty changes in the constitutions. Various devices have been resorted to in the several states to prevent any hasty action of this sort, and it seems to me that the efforts of this Association should be, not to favor any changes in the constitutions, but to adhere to them, and add to their permanency as far as possible in their

established form. I take it that the efforts of this Association are intended to be in the direction more particularly of the statutory laws, now becoming so numerous and voluminous. That an effort to secure some degree of uniformity in this direction is a proper one, everybody here must admit. But with the constitutions the case is very different. They should be left to the interpretation of the courts, uninfluenced by an association of this character, it seems to me, especially in view of the fact, that the law proceeds directly from the people themselves, and not from their representatives or delegates in any sense.

Richard T. Merrick, of the District of Columbia:

We have been endeavoring, in this quarter of the hall, to discover what this committee will have to do, if it is appointed. If it is proposed that the committee should undertake to assimilate, for example, the constitution of Indiana to that of Massachusetts, they would find they had a troublesome task before them. Or if it is proposed that this committee are to take some action in cases of state or Federal legislation in conflict with the provisions of Federal or state constitutions, I respectfully submit that this is a matter that the Association can better keep under its own immediate charge; and in any cases of either Federal or state legislation, where it is deemed expedient, it would be better to raise a sub-committee and instruct it as may be thought proper. But I think we are acting unwisely if we establish such a committee as is proposed; a committee with no particular and well-defined duty; a committee which may have a field of operation so large, and which might commit the Association, by the expression of an opinion upon measures or questions in reference to which the Association might not agree with the committee.

Benjamin A. Willis, of New York:

The resolution of my friend from Philadelphia commands my heartiest approval, for the reason that it promises to meet a need that above all others is felt to exist—a proper understanding of what the governmental function is. I presume that is

the purpose contemplated to be served by this committee, to define that function. Loose notions are entertained respecting the province and power of the legislature, and to consider and define wherein those powers consist is the objective point intended to be reached by the passage of this resolution, as I understand it.

M. G. B. Swift, of Massachusetts, desired the Secretary to read the preamble to the Constitution of the Association, defining its object.

This being complied with,

Mr. Swift said:

It seems to me that every question that arises in this assembly should be considered and discussed in a temperate and friendly manner.

The objections which have been made to the appointment of this committee, or to this motion, would with equal force apply to the organization of this society originally, and to the consideration by this society of any question which at this meeting, at least, has come before it.

Why should we have a Committee on Commercial Law, or International Law? Why should we send our congratulations across the water to a society for the avowed purpose of codifying the Law of Nations? It seems to me we have committed ourselves as an Association to the consideration of these questions, not as fanatics or revolutionists, but as men of understanding, as men desiring that their influence as lawyers in the great commonwealth of this Union shall be for the advancement of mankind, of municipalities, and political states; that is the object, as I understand it, stated briefly, for which this Association has been formed.

Now, in voting for this Committee, we simply vote for a committee whose functions shall be properly to bring before this body the consideration of these questions so eminently proper for the Association to consider. This Association proposes to influence the laws and customs of the people of the various

states, and in that way influence their state constitutions. It is not that we are to arraign the Supreme Court of any state, or the legislature of any state; or to urge any radical changes in their constitutions; or to decide, as by authority, questions arising upon the construction of constitutional principles or statutes. But when such questions arise, and when opportunity does occur, we should be able intelligently to put forth our views, in such a manner that those views shall commend themselves to the people of the country at large. If that is not the object of this Association, and the object of these committees, then I have mistaken its purpose, and have made a mistake in becoming a member of it.

Alexander R. Lawton, of Georgia:

The legislatures are in session all the time, as we heard today, and we know how frequent these questions are, recurring from time to time. It is very natural this body should take note of the legislation that is wanted, and not wanted, and of changes that are desirable—such matters are within the scope of this body. But constitutional questions do not so arise; they are not based upon acts of a body perpetually in session; they are founded upon the fundamental law of the country; and, therefore, there does not seem to be any necessity for a committee to take note of the changes that may arise in constitutions, or the constructions that may be put upon their provisions.

I agree fully with the views expressed by the gentleman from Missouri, who sits in front of me (Mr. Hitchcock), in reference to the action of this body; that it should assume neither judicial nor legislative functions. It would be ill-advised for this Association to endeavor to dispose of questions which may be still pending in court, although it might be proper for any member to present such matters in the form of a paper, especially such as have been decided on both sides, for instance, like the very interesting question discussed by the learned gentleman from Missouri, himself (Mr. Hitchcock), in reference to the inviolability of telegrams, two years ago; or upon new

constitutional questions that may arise; but it is out of the province of the Association to decide questions of a fundamental character. We are not to settle anything of that nature here, though, as I say, we may properly discuss them in the way I have suggested.

Mr. Vaux:

How can you justify a standing committee on international law?

Mr. Lawton:

International law is all the time under discussion, and by large bodies of men who go about holding councils in different parts of Europe. The whole body of that law is made up in that way, by discussion; there is no regular body of men to make international law by legislation; it is made by suggestions coming from such bodies as that to which we sent a message to-day, to show our appreciation of what they are doing.

Alvan P. Hyde, of Connecticut, thought the matters which it was proposed the Committee should deal with came within the province of the existing Committee on General Jurisprudence. He did not consider the appointment of another committee necessary. The objects of the Association were to promote assimilation of the laws upon those subjects which were of general interest, as much as possible; to promote harmony among the members of the Bar; to raise the standard of admission, and to raise the profession in the estimation of the public, and, he might add, in the estimation of themselves. He thought the Association had as much as they could do at present. It had been asked why there was a Committee on International Law; he could not answer that question, for he never had heard a word from that Committee, and did not know what they had achieved. The Association should not undertake more than it could perform; the present committees were amply sufficient to meet the requirements, and he did not think there was need of another.

Charles S. Bradley, of Rhode Island, suggested the impropriety of making any change in the organic law, in the absence of a large number of the members. He moved that the matter lie on the table until the Association met again, when a larger attendance might be expected than were present.

Simeon E. Baldwin, of Connecticut, suggested an amendment, that the resolution be indefinitely postponed.

Mr. Bradley moved that the resolution lie upon the table, to be taken up and be made the subject of special order for the next day.

The meeting adjourned, on motion, until 10 o'clock Thursday morning, August 18th.

Thursday, A. M., August 18.

Association called to order by the President at 10.15.

Several new members were then elected.

(*See List of New Members at the end of the Minutes.*)

11. The President then introduced Clarkson N. Potter, of New York, who delivered the Annual Address. (*See Appendix.*)

12. At the conclusion of the address the President announced the receipt of the following cable dispatch from Cologne:

"AMERICAN BAR ASSOCIATION.

"*Saratoga, New York.*

"Our Association thanks yours, and reciprocates good wishes.

"FIELD,
"*President.*"

13. Benjamin A. Willis, of New York, moved that the thanks of the Association be extended to the Hon. Clarkson N. Potter for his scholarly, instructive, and able address.

Seconded by Isaac D. Jones, of Maryland, and unanimously adopted.

14. In pursuance of the regular order of business, the President then called upon Carleton Hunt, of Louisiana, Chairman of the Committee on Legal Education and Admission to the Bar, to present the report of that Committee, which was accordingly done, as follows:

To the President and Members
of the American Bar Association.

Your Committee on Legal Education and Admissions to the Bar herewith submit a report on the matters referred to them.

In conformity with the resolutions adopted by the Association at the last annual session, your Committee addressed to the Vice-President and local council for each state a letter, requesting to have reported to your Committee the facts in regard to the qualifications existing by law, for admission to the Bar in such state, the means therein provided by public authority, or otherwise, for promoting and facilitating the study of the law; and the necessity or propriety of elevating the standard of qualifications for the admission to the Bar, as well as the best means of accomplishing that object. A copy of the circular letter of your Committee here referred to is annexed as part of this report.

In reply to the letter, answers have been received from as many as twenty-three states. These answers are likewise annexed for the consideration of the Association. The Committee are also enabled to submit a tabulated statement of the requirements for admission to the Bar in all the states of the Union.*

Examination of the papers thus placed in the possession of the Association, will show that they are not only interesting, but, in repeated instances, of much value. It is also made evident, that the discussions which have been had in the Association, as well as elsewhere, in relation to advancing the standard of legal education, have attracted much attention in the profession, excited into wholesome activity the friends of true reform, and resulted already in measures calculated to promote

* See Appendix.

a better education. It is noteworthy, in consideration of the direction given by the Association to your Committee, to offer anew such suggestions as they may choose to present, that the positions taken by the Committee in their report of 1879 have met with strong support. The endorsement of this report, pronounced in the annual address of the President, on the opening of the present session, is fresh proof of the approval with which the report has been followed.

In conclusion, your Committee, in view of the fact that many of the replies to their circular letter have been only recently received, respectfully request that further time may be allowed for the fuller consideration of the communication sent them, and for the presentation to the Association of such additional report as the nature of the subject referred to may require.

And the Committee recommend the passage of the following resolutions:

1. That the State and other Bar Associations be respectfully requested to recommend and further in all law schools, as soon as practicable, a general and thorough course of instruction, under an adequate number of professors; said course to be duly divided, for ordinary purposes, into studies and exercises of the first year, of the second year, and of the third year.

2. That the diploma granted to those pursuing successfully the studies of such a course, and passing such full and fair written and oral examination as may be satisfactory both to the faculty of the school and to the proper authorities of the state, ought to entitle the recipient to admission to the Bar as an attorney-at-law.

3. That the time spent in any chartered and properly conducted law school, ought to be counted in any state as equivalent to the same time spent in an attorney's office in such state, in computing the period of study prescribed for applicants for admission to the Bar.

CARLETON HUNT, *Ch'n*,
HENRY STOCKBRIDGE.

Before the matter was submitted to the meeting, Mr. Hunt made the following remarks:

In 1879 the Committee submitted an elaborate argument, resting upon principle and authority, in support of the views which they entertained, and this argument included a consideration of the time which was to be served by a student, in preparation for admission to the Bar. Since the Committee agreed upon a definite time, their conclusion has received the strongest approbation in communications from widely separated and most distinct sources. There will be found, in the first resolution presented to the Association, the course suggested by the Committee, and which is sanctioned by the action of governments, and the authority of devoted students.

The course of instruction is to cover three years, and as appears from the second resolution, there is to follow an examination on the course, and it is supposed by those who have given the matter attention, that a proper course of instruction will take at least three years, but no student is to be bound to this time; if there be found a young man sufficiently inspired to go over such a course and to pass such an examination, for example, after six months' study, the plan gives him the right to do so.

In the second resolution the Association is asked to say that a student going over the course of instruction and passing the examination satisfactorily to the examiners, and to the state, shall be entitled to practice law. The Committee had in view, it is true, schools in which a diploma is issued, justly entitling the student to admission to the Bar; but they took into consideration the strong opinion in the Association, and the judgment of the country, that no system of legal education ought to be entirely uncontrolled by official connection with the state.

To return to the first resolution.

The faculty is required to consist of an adequate number—that being a number equal to the undertaking of the course prescribed, or a faculty sufficient in point of numbers to meet the requirements which belong to education in modern and progressive times.

The final resolution speaks for itself. The object of this is not only to prevent students who desire to avail themselves of distant seminaries of instruction, to which they may be called by superior advantages, from suffering for the time so usefully spent, but also to secure to them the right to compute it as equal to as much time spent in a lawyer's office in their own state, in making up the period required.

This seems to be all that is necessary to bring the present matter before the Association. I will only allude to the gratifying support which the Committee have received from all sources. The State of New Hampshire furnishes an example worthy of imitation, and a letter attached to the papers shows fully the excellent system in that state. From the State of Virginia, the Committee have been enlightened by an elaborate paper from Mr. Tucker, a learned and distinguished member of this Association, who has spent a considerable part of a useful life in the exercise of rare didactic powers, in instructing in the science of the law.

The Committee feel confident of having taken much pains. They have done all in their power to avoid the objections urged at the last annual meeting. The subject is now presented for action to the Association. Its true character would suffer if the opportunity were to pass without an expression in favor of progress and of liberal legal education.

The report was received, and the resolutions appended to it were then unanimously adopted.

The President said that the privilege of making a future addition to the report was impliedly granted, and that no special vote of the Association was necessary to that end.

15. Simeon E. Baldwin, of Connecticut, on behalf of the Committee on Jurisprudence and Law Reform, then offered the following report of that Committee:

To the American Bar Association.

The Committee on Jurisprudence and Law Reform present the following report:

At the last meeting of the Association, the following resolution was adopted:

Resolved, That the Committee on Jurisprudence be requested to ascertain and report at the next session, how far executive officers of the general government can reverse the action of their predecessors, in cancelling land patents which have already been issued.

The answer to this question seems to be clearly given in the recent case of United States *vs.* Schurz, 102 U. S. 378. It was there decided, that as soon as a land patent is regularly signed, sealed, countersigned, and recorded, the title passes, without the actual delivery of the instrument, and all power of recall on the part of the land office is at an end. If the proper officer determines to issue a patent under a misapprehension of law or of fact, it may be voidable, but is not absolutely void. In the words of the Court: "The mode of avoiding it, if voidable, is not by arbitrarily withholding it, but by judicial proceedings to set it aside, or correct it if only partly wrong;" (p. 401). The patentee is entitled to the possession of his patent as soon as it is recorded, as against the Secretary of the Interior, and his title is no longer a matter of executive cognizance. But "if it has been issued without authority of law, or by mistake of facts, or by fraud of the grantee, the United States can, by a bill in chancery, have a decree annulling the patent, or possibly a writ of *scire facias*;" (p. 404).

This decision of the Supreme Court has removed any difficulty in answering the question put in the resolution under consideration; but your Committee venture to suggest the inquiry, whether it is the proper province of this Association to seek to inform itself, or any of its members, as to what may be the law concerning particular points of private right, which are or may be the subject of pending litigation. It would seem to us that it can seldom further the objects of this body for it to inquire what the law on any subject is, except with a view to determining what the law on that subject ought to be.

At the meeting of the Association, held in 1879, your Committee were instructed to prepare a synopsis of the laws of the several states and territories relating to divorce, with reference to the possibility of securing greater uniformity in such legislation. The amount of labor involved in this undertaking is, of course, considerable, and we have not yet been able to complete our task. The chairman of the Committee, by whom most of the work has been done, is representing this Association this week at the annual meeting, at Cologne, of the Association for the Reform and Codification of the Law of Nations, and, in his absence, we prefer to confine ourselves simply to reporting progress.

The subject is too important to receive any but the fullest treatment, and while your Committee are of the opinion that greater uniformity in divorce legislation may reasonably be hoped for, they are unwilling to submit any report not based on the closest examination of that now existing, not only in this country, but in others whose social institutions are at all similar to our own.

All of which is respectfully submitted.

SIMEON E. BALDWIN,
HENRY HITCHCOCK.

Saratoga, August 16, 1881.

The report of the Committee was then adopted.

16. Rufus King, of Ohio, Chairman of the Committee on Judicial Administration and Remedial Procedure, then offered the following report of that Committee.

Mr. King said that two subjects were referred to the Committee: one being with reference to the law and practice in the various states in the taking and perpetuating of testimony out of court.

With reference to that subject, it required so much attention that the Committee had been unable fully to complete it, although considerable had been done. The Vice-Presidents of

the Association in the various states had responded to the applications made to them for information, but there yet remained twelve states to hear from. In addition to that fact, two members of the Committee were in Europe. He would merely report progress upon the subject, and ask for an extension of time.

Upon motion of James O. Broadhead, of Missouri, seconded by Mr. Gantt, of Missouri, further time was granted to the Committee.

17. Upon the other subject Mr. King offered the following report:

To the President and Members
of the American Bar Association.

By a resolution of the Association, at the last annual meeting, this Committee was instructed to ascertain and report how far Congress can vest in the state courts the power to execute a National Bankrupt Law (Rep. p. 29).

The Constitution of the United States, Article 1, Section 8, provides that Congress shall have power to "establish uniform laws on the subject of bankruptcy throughout the United States."

By the same clause, power is given to Congress to "establish an uniform rule of naturalization," and under the latter clause it has been held that the state courts may naturalize citizens, although such act of naturalization was considered of a judicial character, when there was a state statute allowing its courts to take cognizance of the matter. See *ex parte* Knowles, 4 Amer. Law Reg. 598. Hence it might be inferred that by special legislation of the states their courts can carry out the provisions of a Bankrupt Act enacted by Congress, and conferring the power.

But there is no doubt that vesting in the state courts the execution of a National Bankrupt Law, is a delegating of the judicial power of the United States to state courts. See *ex parte* Knowles.

Has Congress, then, the right to delegate to the state courts any of the judicial power of the United States?

By Article 3, Section 1 of the Constitution of the United States, it is provided that the "judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."

On this clause of the Constitution there is a direct decision of the Supreme Court of the United States, in the case of Martin *vs.* Hunter's Lessee, 1 Wheat. 304, to the effect that Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself.

In the case of the United States *vs.* Lathrop, 17 Johns. 4, Spencer, Chief J., said: "It is too plain to me for discussion, that the expression in the Constitution that the judicial power of the United States is to be vested in the Supreme Court, and such inferior courts as Congress may, from time to time, ordain and establish, can have no reference to the courts established by the respective state legislatures. The conferring jurisdiction on such courts is not to ordain and establish them, and in no sense can the state courts become the inferior courts intended by the Constitution." In this case, the action was brought in a New York court to recover penalty under the Act of Congress passed August 2, 1813, entitled "An Act for laying duties on licenses to retailers of wines, etc., etc.," and imposing a penalty for selling without license, contrary to the provisions of the Act. The defendant pleaded to the jurisdiction of the court, alleging that the action ought to have been brought in the Federal Court. And the court held, *inter alia*, and for the reasons above stated, that the action for the penalty incurred for selling spirituous liquors without a license, contrary to this Act of Congress, could not be brought in the state court.

And in *ex parte* Knowles, above cited, it was considered that the act of naturalizing a citizen was a judicial act, and that Congress had no authority to confer the power of naturalizing

citizens on the state courts, nor had the state courts power to naturalize citizens, voluntarily, in the absence of state legislation on the subject.

The decision in United States *vs.* Lathrop is supported by similar decisions in Virginia, Ohio, and Kentucky, which are reviewed by Ch. Kent, 1 Com. 403–4 and notes.

In this view of the question, and if the state courts must acquire their authority to act by the common law, or the legislation of the states, it may, therefore, be concluded that they could not otherwise have power to put into execution the provisions of a Federal Act of Bankruptcy.

But there is still another view of the subject arising upon the question whether the states, even by express legislation, can give to their own courts authority to enforce or assist in enforcing laws of Congress. The case of Prigg, 16 Peters, 539, is considered by an eminent writer on constitutional law as deciding that the states cannot participate by legislation in any matters which are exclusively national in their nature. But though the case was argued upon that ground, the decision actually went upon a different point. The case arose upon a statute of Pennsylvania, March 26, 1826, concerning the extradition of slaves, and inflicting a penalty upon any person taking and carrying away by force and violence any negro or mulatto from the Commonwealth. This Act was held void as being in direct violation of the Constitution of the United States, and the Act of Congress, February 12, 1793, regulating the extradition of slaves, and a conviction under it in the Pennsylvania courts was reversed.

Three of the judges, while concurring in the result, dissented from the doctrine, or reasoning, upon which it was maintained by the majority of the court, holding that the power to legislate upon the subject of extradition, whether of slaves or fugitives from justice is so exclusively vested in Congress that the States can pass no law in relation to it.

But as it was conceded in that case, as well as in Martin *vs.* Hunter's Lessee, *supra*, and Houston *vs.* Moore, 5 Wheat. 1

(see also 8 Metcalf, 313, and 1 Kent Com. 395), that it is competent, where the power is concurrent and not exclusively national in its nature, to vest the state tribunals with jurisdiction, so that, with the assent of Congress, they may take cognizance of all such cases, even to the extent, as in Houston *vs.* Moore, of enforcing acts of Congress, the question might still remain in this view, whether the matter of bankruptcy is exclusively national, so as to forbid Congress from conceding to the state courts power to execute a National Bankrupt Law.

In Sturges *vs.* Crowninshield, 4 Wheat. 122, it was decided that the states have concurrent authority to pass bankrupt laws. But this decision was with the very material restriction that such laws shall not impair the obligation of contracts, nor conflict with any act of Congress. The principle seems to be that, although Congress cannot confer new jurisdiction or powers upon the states, or their courts, it may, nevertheless, remove or exempt them from the disability which, in matters of concurrent jurisdiction, it has the power to interpose. (1 Kent Com. 398; 2 Kent Com. 391.)

In either view of the question, the real difficulty seems to be whether, even with the concurrence of Congress and the state legislatures, it is possible to invest the state courts or their officers with jurisdiction or any exercise of authority over the rights of persons outside of their own borders, and discharging the obligations of antecedent contracts so as to establish anything like a uniform or efficient system. This would be to create and confer a new jurisdiction upon the state courts, which it is not in the power of Congress to do. (Story, on the Constitution, Sections 1109–10.)

In the opinion of the Committee, this is an insuperable objection, and upon these considerations, with others which might be added, they are, therefore, of opinion that Congress cannot vest in the state courts the power to execute a National Bankrupt Law.

RUFUS KING, *Chairman*,
A. R. LAWTON,
GEO. W. BIDDLE.

Upon the motion of Isaac D. Jones, of Maryland, to adopt the report, the following discussion took place:

Simeon E. Baldwin, of Connecticut:

No allusion caught my ear in the report just read to the case of Claflin *vs.* Houseman,* in one of the early volumes of Otto's Reports, where, if I recollect rightly, views were expressed by the court somewhat different from those given in the case of Martin *vs.* Hunter's Lessee, and my impression is, that in the case of Claflin *vs.* Houseman, which arose under our recent bankrupt law, the jurisdiction of state courts over controversies between assignees in bankruptcy and adverse claimants was sustained, it being held that the state courts were parts of the general machinery of American government, and that they had a sort of a common law jurisdiction over all controversies of that character, whether arising particularly in a bankruptcy case or in any other. I have no doubt the Chairman of the Committee will remember it, and I ask if that did not, in some particular, modify the views expressed in the earlier cases referred to in the report.

Robert G. Street, of Texas:

The Committee are deserving of great credit for the labor they have expended upon this subject. Nevertheless I feel under the necessity of offering a substitute for the report of the Committee, and I do so in the following resolution:

"*Resolved*, That it is the sense of this Association that the expression of opinion on controverted questions of law is not within its province."

The President:

The Chair does not think the resolution can be made a substitute for the report of the Committee, but after the adoption of the report, the resolution of the gentleman from Texas will be in order.

* In Claflin *vs* Houseman, assignee, it was held, that under the Bankrupt Act of March 2, 1867 (14 Stat. 517), the assignee might sue in the state courts to recover the assets of the bankrupt, no exclusive jurisdiction having been given to the courts of the United States.

Mr. Jones, of Maryland, was allowed to withdraw the motion to adopt the report, and move its reception by the Association. And the report was received.

Edward O. Hinkley, of Maryland:

I desire to call the attention of the Committee to a matter I did not hear in the report, namely, that Mr. Madison, in the *Federalist*, in one of his papers concerning the judicial department of the government of the United States, has suggested that it is in the power of the United States to vest in the state courts the powers intended to be exercised under the Constitution of the United States. I thought it not improper to call attention to this suggestion, although it has been suggested that the opinion expressed by him, in the light of what has been since decided, must be considered as having been overruled.*

E. F. Bullard, of New York:

I move that the report be referred back to the Committee, and held over for another year's consideration. It seems to me the matter is too important to be passed on at this time with so slight an examination. I was the author of the resolution that called out this report, and I will state my object. I believe the members of the bar generally throughout the country desire the passage of a bankrupt law, but a great objection is found in rural districts. In the large cities of New York, Boston, and Philadelphia the jurisdiction is exercised by the United States Courts without embarrassment; but take this northern district of New York to illustrate the difficulties in the country. Our judge formerly resided at Buffalo, and we had to travel from three to four hundred miles to get to the court. The judge is now located at Syracuse, and that is within easier reach.

*Alexander Hamilton, in the *Federalist*, No. 81, says: "To confer upon the existing courts of the several states the power of determining such causes, would perhaps be as much 'to constitute tribunals' as to create new courts with the like power."

You will find this is the great complaint in the rural districts—that it is difficult to get a case before a judge without great expense. The marshal's fees for serving papers, the clerk's and the register's fees, and the expenses in general, were rendered so large that rarely was there anything left for the creditors. We want a bankruptcy law that can be administered at a small expense, and if the power lies in Congress to give it to the state courts, so that each county judge or each local judge can perform its duties, the great objection will be removed. I hope the matter will be suspended another year without being disposed of in its present shape.

James O. Broadhead, of Missouri:

I rise to ask whether it would be in order to move the adoption of the report. There is a motion to refer it back to the Committee. If so, I wish to interpose my motion. I think some gentlemen have misunderstood the reading of this report. I listened attentively to it, and my conclusion was this: that whilst the Committee did not undertake to say what power Congress had in regard to the general proposition to pass a general bankrupt law, to be administered by the authorities of the different states, yet they came to the conclusion that Congress could pass no law giving a state court the authority to exercise jurisdiction over a citizen of another state. That is the conclusion to which the Committee came, and I think there can be no two opinions among the members of the Association on that point, that Congress has no authority in that respect. Whatever authority they may have to pass a general insolvent law which may be operative in the different states, yet they can give to no state court authority to exercise jurisdiction over the citizens of another state out of their jurisdiction. That is the conclusion to which this report comes, and, I understand, the only conclusion. That being my understanding, I move the adoption of the report.

The Chair suggested that a disposition of Mr. Bullard's motion must be first made.

John W. Stevenson, of Kentucky:

I move to make this report the special order of the day, to-morrow, at eleven o'clock; that will enable the members individually to read the report themselves, and fully understand it. It seems to me that disposition of the matter will cover the objection to re-submitting it; and I will add to my motion that in the meantime the report be printed, and copies furnished to the members of the Association.

After some discussion, this motion was adopted.

18. The Chair then called upon the Committee on Commercial Law.

On behalf of the Committee on Commercial Law, George A. Mercer made a verbal report that the Committee was not full, and had no chairman; that nothing was referred to the Committee at the last session of the Association; the only matter contemplated was a bankrupt law, and inasmuch as the order of exercises announced a paper to be read on that subject, the members of the Committee concluded it would be best to make no special report from that Committee.

19. John W. Stevenson, of Kentucky, from the Committee on International Law, stated the reasons why this Committee had no report at this meeting.

20. The Committee on Grievances made no report.

21. Francis Rawle, of Philadelphia, on behalf of the Committee on Publications, reported that the Committee had had two thousand copies of the Report of the Third Annual Meeting printed, and the greater part of them distributed among the members and principal libraries.

22. James O. Broadhead:

Mr. President:—I wish to offer a resolution which I thought would be offered last night; it is a subject not exactly in order in the routine of business, but one that we should delay no longer.

Resolved, That this Association regard it to be a duty publicly to express their deep sympathy with the President, his family, and the nation, in the great sorrow through which they are now passing, their horror at the crime which has plunged a nation into grief, and their earnest hope and prayer, in common with their fellow-citizens of every name, that the President may soon be restored to health and usefulness.

Isaac D. Jones, of Maryland, said:

I rise with a full heart to second the resolution which has been offered, which I do with the most devout prayer to God that it may be heard and answered in the High Court of Heaven.

Henry Stockbridge, of Maryland, moved that the Secretary be instructed to forward a copy of Mr. Broadhead's resolution to the Secretary of State.

The resolution was accordingly telegraphed by the Secretary of the Association to the Secretary of State.

23. Henry Hitchcock, of Missouri, offered the following resolution:

Resolved, That the Committee on Judicial Administration and Remedial Procedure be, and they are, instructed to take into consideration the causes of the delays now attending the final determination of causes in the Appellate Courts of the United States and of the several states, and at the next annual meeting of the Association to report the conclusions which they may reach, together with such suggestions as they may deem expedient, touching a practical remedy therefor.

I desire to offer the resolution now. There was some uncertainty in my mind as to whether or not it would be expedient to refer the matter to the standing committee which would be most appropriate, or whether it might be thought better to appoint a special committee; that is a matter about which I have nothing to say; I only desire to bring it before the Association.

It seems to me the resolution is appropriate, provided it is regarded as a subject properly within the action of this body. I think it is properly within the sphere marked out for itself by this Association. The condition of the docket of the Supreme Court of the United States we all know; and so far as the question touches us at home, in Missouri, it has been a subject of great complaint, and it is universally recognized in that state that the over-crowded condition of the docket of our Supreme Court has come to amount, in many cases, to a practical denial of justice. So urgent is the state of things in that respect, that the unprecedented step was taken in Missouri of holding in December last, at Kansas City, a convention of members of the Bar of the state. Over two hundred members were present, and all but one of the congressional districts were well represented in convention. They sat during parts of two days, and the sole object was to consider this question. It involved a great difference of opinion, and various plans were suggested. I was one of a committee to which the whole subject—resolutions and suggestions—were referred. There were, I think, nineteen or twenty different suggestions, based, more or less, upon four or five different and highly diverse plans; and the result of that difference of opinion was such that the report of the committee, which recommended for the consideration of the convention the adoption of an amendment to the Constitution, providing for a Supreme Court Commission, was decided not to be a plan which commanded a majority of the members.

We also know that a distinguished member of the Supreme Court of the United States took occasion to express his own views in an article in one of the leading magazines,* not long ago.

It appears to me that the Bench, Legislatures, and Congress, perhaps, are entitled to whatever assistance they can receive from the Bar of the whole country in reference to this question. How can the trouble be remedied? It requires the utmost consideration of all the elements that enter into it. It is

* Justice Strong, in the number of the *North American Review* for May, 1881.

entirely appropriate for this body to give to the subject such consideration as it demands, and that by way of recommendation, if it be found practicable, some suggestions may be presented which will take their place among other suggestions which, altogether, will result in some definite legislation in the states, and possibly in Congress. The adoption of such resolutions may, at least, be expected to have a good effect by setting members of the Association throughout the country to thinking about it, and thus bring about an improvement.

Richard T. Merrick, of Washington, D. C., said:

Practical action, rather than theoretical discussion, is the most desirable course for the Association to take, if it intends to meet the exigency. I am under the impression it would be wiser and better, in view of the existing emergency, particularly in respect to the docket of the Supreme Court of the United States, that this Association should take some action now, at least as to the expression of its opinion in reference to the manner in which the ends of justice may be attained, and these unreasonable delays, that now constitute a denial of justice, may be avoided. I understood the resolution offered by Mr. Hitchcock, as well as I could hear it, to refer not only to the United States Supreme Court, but to the courts of last resort in the several states. What I have to say in regard to it has relation to the Federal Court alone. That court has now upon its docket from eleven to twelve hundred cases, I think; fully a thousand, certainly. It is only able at each term to dispose of from three hundred to three hundred and fifty at the outside, and we all know that an appeal taken to-day from a Federal tribunal, cannot be reached for argument in the Supreme Court for three years. The judges are overworked, the docket is over-stocked, and litigants are denied that right of speedy trial which they have been assured under the Constitution they should have. How shall this be remedied, is the practical inquiry, and I submit we should take some definite action at this meeting.

There are now pending in Congress two bills. One, in the Senate, proposing to meet the difficulty by the formation of intermediate courts, and the other, in the House, proposing to effect a remedy by reorganization of the Supreme Court—enlarging the number of its judges to not less than twenty-one; dividing it into three chambers; requiring them, in reference to the original jurisdiction afforded, to act separately, and in all questions relating to a construction or application of the Constitution to sit together; not less than two-thirds to be required to constitute a quorum.

These two bills represent two different opinions in the profession, and I am satisfied that the statesmen of the country, and the legislature, would be profoundly gratified to have an expression of opinion from the profession represented in this Association. For myself, I am clearly of opinion that it would be wiser and more expedient to divide the Supreme Court, creating not less than twenty-one judges, allowing them to sit in three different chambers—one hearing appeals at Common Law, another in Chancery, and another in Admiralty, and various other jurisdictions, bankruptcy, etc.; requiring them, in constitutional questions, to immediately certify the case from the division in which it arises to the judges sitting together.

I am convinced that a careful scrutiny of the article of the Constitution in reference to the administration of judicial power, will satisfy any member of the profession that an enactment in accordance with the bill now in the House, as I have stated, is fully within the constitutional power of Congress.

I think it is expedient for us to consider and determine which of these methods will be most advantageous to adopt, and I move, as an amendment, that the committee to whom the resolution of the gentleman is referred, be required to report to-morrow morning, Friday, at half past eleven o'clock, and that their report be made the special order of the day at that time, to succeed the order now pending for eleven o'clock.

Mr. Hitchcock, of Missouri, said the amendment sought to deal with the matter in a too summary manner. The

attempt to come hastily to a conclusion, in a matter of such moment, would be simply to attempt an impossibility. His experience in the Missouri convention, at Kansas City, before referred to, had convinced him of that fact. It should be referred to a special or standing committee to deliberate upon, and make a carefully prepared report, after considering all of the suggestions that had been made upon the matter. There were many members of the profession who were not in favor of the plan recommended by Mr. Merrick. After the committee had considered the matter and made their report, the Association would be in a position to recommend some distinct and practicable plan next year. He hoped the amendment would not pass.

Mr. Merrick said he was not particular in reference to the details, but in his opinion the Association should express itself before it adjourned. When the matter was brought up in the morning he should move for the expression of an opinion by the meeting upon the subject, as to which of the two modes mentioned should be adopted.

A motion made by Mr. Merrick, viz.: "that the resolution offered by Mr. Hitchcock lie over until to-morrow, Friday, and be made the special order of the day at half past eleven A. M., after the special order for eleven o'clock shall be disposed of," was then unanimously adopted.

24. John W. Stevenson, of Kentucky, offered the following resolution:

"*Resolved.* That the Executive Committee be instructed to inquire into the propriety of extending the time of holding the meeting of this Association from three to five days, and at such time as they may think proper."

In connection with his resolution, Mr. Stevenson suggested that the meeting be held earlier in the month than usual, and that the Committee report the following morning.

Isaac D. Jones, of Maryland, seconded the motion. Adopted.

25. On motion of Asa Iglehart, of Indiana, the thanks of the Association was unanimously voted to Judge Cooley, "for the very able and thoughtful paper presented to the Association and read."

26. Robert G. Street, of Texas, gave notice that at the proper time he should renew his motion with regard to the Committee report upon the bankruptcy law.

27. The Chair then announced the appointment of the Obituary Committee, as follows:

Edward Otis Hinkley, Secretary [*ex officio*]; Everett P. Wheeler, of New York City; M. Dwight Collier, of St. Louis, Mo.

Mr. Hitchcock informed the Chair that Mr. Collier was in Europe, whereupon the Chair appointed Mr. Hitchcock in lieu of Mr. Collier.

28. The Chair then announced that a discussion upon the paper of Judge Cooley would be in order at any time during the session of the Association the next day, subject to the special orders pending.

On motion of James O. Broadhead, the meeting then adjourned until eight o'clock P. M.

Thursday Evening, August 18.

Meeting called to order at 8.20 by the President.

29. Luke P. Poland presented the names of new members, recommended by the General Council, and they were declared elected. (*See List of New Members at the end of the Minutes.*)

30. The Chair then introduced to the meeting Samuel Wagner, of Philadelphia, who read a paper on "The Advantages of a National Bankrupt Law." (*See Appendix.*)

Roger Averill, of Connecticut, moved "that the thanks of this Association be tendered to Mr. Wagner for the interesting and able discourse just delivered."

Seconded by Mr. Hitchcock, and unanimously adopted.

31. Carleton Hunt, of Louisiana, said:

I am directed by the General Council, in their behalf, to move that a vote of thanks be returned to the Executive Committee, and the Secretary, and Treasurer, for the public spirit, zeal, and efficiency, and the very great courtesy with which they have discharged their respective duties during the past year.

I need not say, that I take pleasure in making the motion, and I consider it a great compliment that my associates in the council charge me with the duty of making the motion.

The motion was then unanimously adopted.

32. Henry Stockbridge, of Maryland, offered the following resolution:

Resolved, That the Committee on Jurisprudence and Law Reform be requested to inquire into, and report, at the next session of the Association, upon, the expediency of establishing, in connection with the legislative department of the state governments, a "Commission of Legislation," a committee or a legal board, whose duty it shall be, from time to time, to prepare such bills for the legislature as the progress of events or the consolidation of existing statutes may require; and to which shall be referred public bills which may be pending, that they may receive proper form, be made to harmonize in their several parts, and be put in such terms as to accomplish the object of their enactment.

2. That if said Committee deem such a commission or board practicable, they be requested, in their report, to indicate the best mode of constituting and establishing the same.

Mr. Stockbridge, in offering the resolution, said:

The members of the Association, Mr. President, have not all had the happiness which you have enjoyed of going through so

many volumes of recent statute law, and therefore we do not recognize as thoroughly as you do the anomalous condition in which so much of our state legislation is involved. The reason of the difficulty lies largely in the fact that men are placed in our legislatures, and placed upon our judicial committees in the legislatures, who are utterly unfit for the position they occupy; men who are sent to the legislatures to enact laws, or amend them, without knowing what the laws are, or what the practical difficulties are. If some assistance could be afforded to them in the preparation of laws, it might be better. I have therefore framed this resolution which has been read.

Asa Iglehart, of Indiana, inquired how the proposed result was to be achieved. He would like to know the intention of the resolution in that respect.

Mr. Stockbridge:

My object was simply to inquire of this body whether it is not practicable for states to provide a means by which the crudities and incongruities of the statute laws might be remedied.

Carleton Hunt, of Louisiana:

I sincerely trust that this resolution may prevail, and I think the Association ought to be very much indebted to the gentleman from Maryland for calling its attention to so important a topic. It is very well known that it is the custom of some governments to have a reference similar to that hinted at in the resolution. The matter deserves careful consideration, and we should be showing a lack of respect to the gentleman who proposed the resolution if we do not give it the attention it deserves.

Charles N. Davenport, of Vermont, said he thought there was a constitutional difficulty in the way of passing the resolution offered. How could such a body have any authority over matters of legislation?

Take any state in the Union under the present condition of our system of government. How are you going to create a

commission outside of the legislature that will have any power or effect upon the legislature?

Cortlandt Parker, of New Jersey, thought the scope of the resolution came clearly within the province of the Association, one of the objects of which was the attainment of similarity in the statute law—Federal and state. It suggested steps toward a very laudable and desirable object. As he understood it, the suggestions offered in the resolution were feasible. There existed in each state some method of shaping legislative enactments—not to create them, not even to suggest them, but to shape them so that they might be better drawn, more wisely framed. He had in mind one state where it is now the law that bills submitted to the House shall, before they are passed, be placed within the charge of the Attorney-General of the state, who was by law made a sort of committee to shape the phraseology of bills. As he understood the intent of the resolution, it sought to obtain the formation of some outside committee, if it might be so called—some commission, at least, whose duty it should be to shape the phraseology in which bills were drawn up. If such a body existed in every state, undoubtedly it would tend to a similarity in legislation.

Asa Iglehart, of Indiana:

I do not forget that this resolution was one of inquiry, but it seems to me to be not very consistent with the gravity of this body even to pass a resolution of inquiry for such a purpose. The proposition really is, whether it is not expedient for our independent, omnipotent legislatures to constitute a revision commission to prevent the crudities of their legislation. If the gentleman had confined himself to the idea expressed in his remarks in support of his resolution, and directed his resolution to that subject, I should be inclined to vote for it as practicable; but I can hardly gravely discuss the proposition as it is.

Mr. Stockbridge:

I should have hesitated long about presenting my resolution, if I thought it would have given rise to such a controversy; but

since a discussion has arisen, I wish to say a few words. It seems to me, as was suggested by the gentleman from New Jersey (Mr. Parker), that the resolution is precisely within the sphere of this Association. It is desirable, and I think feasible, to improve the legislation of the country, as much so as it is to improve the judicial administration of the laws. Nor is it a new matter by any means. Half the states in the Union, and I think I speak within bounds, have, in a greater or less degree, something similar to this; they have adopted commissions charged with codifying the laws of the state; they have adopted commissions, or appointed committees of men learned in the law, to consolidate the laws bearing upon a particular subject, and make a report on their labors. Much of our legislation is designed to remedy some single defect by "patching," and a statute law is patched by this legislature, and patched by that, until it becomes "a thing of shreds and patches;" scattered through twenty books it may be, and it is no person's business to take it and consolidate it, and bring the incongruous mass into an orderly shape. Look at the Acts of some of our legislatures; the enactment of statutes such as were referred to in the address of the President yesterday; Acts proposed by men who have given little or no thought to the subject-matter of the Act; men of imperfect experience, knowing nothing as to how similar Acts have worked elsewhere—the lawyer's great test of value in such matters. The idea intended to be conveyed in the resolution was precisely of the nature suggested by the gentleman from New Jersey, namely, a commission, or committee, whose business it should be specially to draft laws, to whom should be referred, as it is customary in many cases to refer to the judiciary committee of a legislature, the law which is proposed to be framed, to see whether it is harmonious with existing statutes, or if it calls for the modification of some statutes; a committee of men who know what the law is, and wherein it is defective and needs to be changed or modified, so that such a bill might be returned to the legislative body with the sanction and approval of legal minds, and

thus the incongruities of statutory laws might be in a large measure, if not wholly, obviated. That was the only purpose of the resolution, and I think, with all deference, it is not unworthy of the serious consideration of the very able committee which we have upon jurisprudence and law reform. I am not aware of the extent of the labor cut out for that committee, and if they have no time to attend to this matter, of course they would quickly dispose of it; but if they have the time to attend to it, I respectfully submit it is a matter worthy the dignity of this body, and I hope the resolution will be adopted.

Rufus King, of Ohio:

I desire to submit whether the right course in this matter is not to leave it to the committee to decide on the merits of the resolution, even if it is liable to the objection that is made. The character and respectability of the mover, and the undoubted importance and gravity of the subject itself, should commend this course. It seems to me that is the best disposition to make of the resolution. I hope the Association will allow the resolution to go to the committee, and they will take good care of it, and of the Association in respect to it, I have no doubt.

M. G. B. Swift, of Massachusetts:

I think the influence of the American Bar, and of the attorneys composing it, in their respective localities, is not always felt. The American people have not yet entirely overcome the idea instilled into their minds by various processes, that it is possible the aims and objects of the lawyers may be sometimes antagonistic to the happiness and prosperity of the people; therefore I think this body should be extremely cautious in respect to the measures it takes, and the form it adopts in placing certain things before its committees, because the action of this body is made public, and all its transactions are heralded abroad. Intelligent people, at least, who take an interest in public welfare, are observing, to a greater or less extent, the proceedings of this body, because it assumes a national charac-

ter. Now, it seems to me, we should not do anything which will tend to neutralize our influence over legislative bodies, or with the people who elect members of the legislature. It is quite customary in some of the states of the Union to refer matters requiring peculiar phraseology and forms of expression to the committee on the judiciary; and in some states it is the custom to have every important matter so referred, and the committee have a hearing upon it and report. I think it is hardly fair to the legislatures to say that as a rule they put incompetent men on their judiciary committees; and I wish to say here that I never have been a member of any legislature, and am not now. It seems to me it would be a great deal more expedient for this body to refer the question to a committee in simple form, that the committee inquire and report the most expedient means of having an uniformity of phraseology in the statutes of our various states; that covers the whole question without committing any one to any particular process. I ask you to consider, Mr. President and gentlemen, whether that would not be more appropriate and expedient action for us to take, instead of the phraseology which has been placed before the house by this resolution.

Robert E. Monaghan, of Pennsylvania, suggested that the gentleman from Massachusetts reduce his remarks to writing, in the form of an amendment to the resolution offered.

Mr. Swift:

I will offer it as an amendment; it reads as follows:

"That the Committee on Jurisprudence and Law Reform take into consideration, and report the most feasible and advisable method of securing a correct and uniform phraseology in the statutes of the various states."

At this stage of the proceedings the President called Vice-President Rufus King, of Ohio, to occupy the Chair.

Carleton Hunt, of Louisiana, moved to lay the amendment on the table.

The Chair suggested that would take the original resolution with it, whereupon Mr. Hunt withdrew his motion.

Henry Hitchcock, of Missouri:

Under the phraseology of this substitute, it is proposed to direct the Committee to indicate the mode of doing a certain thing which it is assumed this body is able to do, and which implies a degree of legislative power which I have not heard anybody yet claim for this Association. It seems to me it goes far beyond the original motion.

Henry Wise Garnett, of Washington, thought that in limiting themselves to the phraseology of legislative enactments, the Association were not going as far as the provision of their constitution warranted. In seeking uniformity of legislation, why should they stop at the phraseology? Uniformity in the subject-matter was of far more importance than uniformity in the phraseology only. If the Association appreciated fully the object of the resolution, he thought they could make no objection to it. The purpose was, that there should be a board, or a committee, or whatever it might be called; somebody whose duty it should be to know what had been done in the way of legislation; to know whether the provisions of any proposed bill conflicted with anything already in existence, and to prevent ambiguous language. It must be known to lawyers that courts were many times puzzled to know what the legislature meant when they passed a certain act. Such a committee as the one proposed by the resolution, it seemed to him, would be better able to perform the required duty than any judiciary committee. Although not a member of any legislative body, he lived at a place where a large amount of legislation was transacted, and his experience had been, that parties having charge of bills were generally only too glad to find somebody who would undertake the writing of them. Such a committee as was proposed would tend to keep the line of legislation true and straight.

Simeon E. Baldwin, of Connecticut:

It seems to me, as it did to the gentleman from Missouri, that the substitute proposes something far more extensive and far-reaching than the original motion. As I understood the latter, its object was to have the laws adopted by our legislatures expressed in plain and accurate phraseology; it was not intended, for instance, that the dog law of Connecticut should be the same as the dog law of Missouri, but that whatever law on that subject either state should choose to adopt, should be couched in appropriate language. In my own state it has not been found difficult to accomplish that end by the simple agency of a resolution in that branch of our legislature, where a revising power seemed to be most needed—the most numerous branch—at the suggestion of a learned member of this Association, whose modesty prevents him from taking the floor and explaining his own achievements. Two or three years ago a committee of the lower house of the Connecticut legislature was appointed under the dulcet name of a "Committee on Engrossed Bills," with functions and duties appropriate to a committee, not only for revising phraseology, but for altering, if necessary, the provisions of bills, as I understand it, so as to make them in harmony with the real intent of the law-maker. That committee has now been made a standing committee of that house, and all bills are referred to it before final action is taken on them. There was no unwillingness, as far as I know, on the part of that branch of the legislature to adopt the measure, and it has worked well. Now, I understand the resolution of the gentleman from Maryland to be so worded as to admit of a recommendation (should the Committee think proper) of some such scheme as that I have spoken of, to the legislature of any state, if they think it advisable to adopt it: but it does seem to me that to amend this resolution, because it goes too far, by a proposition which goes still further, is a mistake, and that a simple resolution of inquiry of this character ought to be accepted as a matter of course.

Mr. Iglehart, of Indiana:

Do I understand my friend to say that the Connecticut legislature appointed a committee outside of its own body?

Mr. Baldwin:

By no means—of its own members.

Alembert Pond, of New York, thought the resolution tended to the establishment of a "third house" in reality. He thought the suggestions of the gentleman from Indiana (Mr. Iglehart) very pertinent; if it was possible to improve the make-up of the legislature, it was advisable to do so, but the idea of establishing an additional branch of the legislature was a step in the wrong direction.

The Chair then put to the meeting the question as to the adoption of the substitute offered by Mr. Swift, of Massachusetts, which resulted in a negative vote, and the substitute was rejected.

This brought up the question on the original resolution, and the resolution was adopted.

33. Carleton Hunt, of Louisiana, moved "that a committee be appointed by the Chair on parliamentary rules to govern this body, and to report as soon as practicable."

Seconded by Simeon E. Baldwin, of Connecticut.

Luke P. Poland, of Vermont, thought it was inexpedient to adopt any special rules in that respect; he thought the Association would get along very well, and with far less dispute, by trusting to the usual principles of parliamentary law, to be administered by whomsoever shall occupy the Chair.

Mr. Hunt then withdrew his motion.

34. Henry Hitchcock, of Missouri:

I should like to inquire if it will be the pleasure of the Association to discuss to some extent the able paper of Judge Cooley which has been read to us. I had hoped to be able to make the suggestion at an earlier period this evening. The existence

of the dangers that Judge Cooley points out is familiar to every lawyer, I take it. In his paper he suggests a remedy. In Louisiana a system similar to the one proposed by Judge Cooley is in vogue, and perhaps one of the gentlemen from that state might enlighten us upon the subject.

Carleton Hunt suggested that Mr. Semmes, of Louisiana, would perhaps do so; whereupon, agreeably to a general request,

35. Mr. Semmes said:

I shall be pleased to afford such information as I am able. Our system in Louisiana is based upon the theory that every deed is a public record. As an illustration, to convey my meaning the better, the deed does not recite that "I, the grantor, convey or sell or transfer the property to B, the grantee," but it recites, in the language of the notary before whom the instrument is made, that on such a day A B appeared before him and declared that he does grant, bargain, and sell the property in question to C D, who also appeared before him at the same time; and he states the price and terms of the sale. The act of sale is then signed by the grantor and by the notary, in the presence of two witnesses; so that, you see, it is the recitation of what appears to have passed orally before the notary, and a record of the transaction is made by him, and that record is signed by him in the presence of two witnesses, and by the parties to the instrument. It is equivalent almost to a recognizance in a common law court where a party is going surety in a criminal case. The sureties merely appear before the court, and the clerk makes a record of the fact that they appeared and recognized, in such a sum, as sureties for such a person, who is charged with a criminal offence.

This deed of sale, or act of sale, as we call it, is a recognizance, before a notary public, of the fact that the sale has been made, and the terms of it, and the original is signed by the parties to the transaction; that instrument is preserved by

the notary himself. The party never gets the original, but as soon as the act is signed, the notary furnishes to the vendee a copy, certified by him, of the act of sale.

If the notary goes out of office, or if he dies, his records are all bound up and indexed, like ordinary record books, and are transferred to a central office, and there they remain in the custody of an officer, who certifies to the copies that thereafter may be desired of the original instruments in his book. You perceive, therefore, that the original is always preserved under public authority, and by a public officer, and the parties never have possession of that original instrument.

Now, a notary in Louisiana is an officer very different from a notary in any other state; he has all the powers which notaries of other states have, but in addition to that, he is in the nature of a judicial officer. He performs very important functions, and for that reason the notaries are appointed by the Governor, after an examination by the Supreme Court of the state as to the fitness of the person to fill the position. The number of notaries is limited, and each has to give a bond and security for the faithful performance of the duties of his office. For instance, in the City of New Orleans there are not more than fifty notaries, and in the country parishes formerly there was but one, who was called the "recorder of the parish." But under the new constitution the office of recorder of the parish has been consolidated with that of the clerk of the court, and he is now both recorder and *ex officio* a notary. He is expected to possess a certain amount of information upon legal matters connected with the duties of his office. That is a condition precedent, and, as I said, his fitness in this respect is ascertained by subjecting him to an examination by the Supreme Court of the state.

The system, you perceive, obviates one of the difficulties suggested by Judge Cooley. It is true that the certified copy given by the notary is called an authentic act—it is like the judgment of a court—and the consequence is, that under our system in Louisiana, if it is an act of mortgage, that is evidenced by

an authentic act; when you desire to enforce it, you file in court a simple petition setting forth the terms of the mortgage and annex it to your petition, and thereupon the judge, *ex parte*, orders the sheriff to seize and sell the property mortgaged; the sheriff proceeds to do so after three days' notice and thirty days' advertisement, unless he is restrained by an injunction, setting up some valid defence to the deed. The consequence is, that in Louisiana a mortgage is the most effective instrument in the United States; it requires no suit, no bill for a foreclosure; but the party who possesses the instrument of mortgage proceeds in the method I have explained. If it be a note secured by mortgage, it is not necessary to transfer the mortgage itself by any recorded instrument. But the possessor of the note, whoever he may be, takes the note and files with it a copy of the mortgage, and the possession of the note and the mortgage enables him to foreclose it in the manner I have mentioned.

As a further guarantee that the parties shall not resort to injunctions without proper grounds for so doing, the statute provides that if the injunction is dissolved by the court, there shall be a judgment against, not only the principal, but against the principal and sureties on the injunction bond, at the same time giving to the party plaintiff not exceeding twenty per cent. damages for the unlawful obtaining of the injunction.

Now, you would be surprised to see how the system in Louisiana facilitates the making of conveyances. A lawyer scarcely ever draws a conveyance; it is not a part of our professional business. We give instructions if necessary, but instruction is very rarely required, and the reason of it is that our system of titles is so extremely simple. All of our real property is held by an allodial title. The feudal system never was introduced into Louisiana. Our jurisprudence derives its origin from France, and thence from Rome. The title to property cannot be dismembered except by giving what we term a "usufruct," a "right of use," a "right of habitation," or a "servitude;" they are the only titles known in Louisiana. There is an absolute ownership, which is what you call a fee simple title. A usufruct

title may be established by the owner, which gives to the usufructuary enjoyment of the property either during his life or for a specified period. A right of use or habitation is but a limited usufruct, and servitude is what you call an easement. A servitude—we call it a *predial* servitude—is where one piece of land owes an easement to another piece of land. A right of way, for instance, we call a servitude. Now, in consequence of that simplicity, and being happily ignorant of "contingent remainders," and "executory devises," and "springing uses," "resulting trusts," etc., our law looks entirely to the protection of the purchaser. In Louisiana it is unnecessary to say anything about covenants of title; it is unnecessary to make any guarantee, for all of the covenants which you must have in the common law deed are implied from the use of the term "sell," and unless you limit the guarantee which that term implies the guarantee exists by the operation of the law. You will perceive, therefore, that the purchaser is always protected, because the vendor must expressly limit the guarantee which the term "sell" would otherwise imply. Not only is that the case, but our law prohibits the establishment of any title other than that of absolute ownership, the usufruct, the use and habitation, and the servitude; you may establish title in any language you think fit to use; if the idea is conveyed it is sufficient; no certain form of expression is necessary.

If a lease is given—to show you how, under our system, the law protects the party—it is not necessary to covenant that in the event of the house being burned down, the rent shall cease. The law implies, from the act of leasing, a guarantee that the party shall have the enjoyment of the property during the lease, in the condition it was at the time the lease was made; whereas we know that at common law, unless there is an express covenant that the rent shall cease if the building is destroyed, the lessee has to continue payment.

Now, then, in regard to conveyances executed abroad. In order to appreciate that I must call your attention to the distinction which exists between "authentic acts," as we call them,

and acts under private signature. An authentic act is one that imports absolute verity, like a judgment, and is executed by the notary in the presence of two witnesses, and it is for that reason termed a solemn act, because its validity as an authentic act depends upon the solemnity of its being executed by the notary in the presence of two witnesses. If it is executed before a judge or justice of the peace, it is not an authentic act, but it is "an act under private signature." A promissory note is an act under private signature. Any agreement signed by the parties is an act of private signature, unless it be executed before a notary in the presence of two witnesses; and there are certain acts in Louisiana which must be executed in that form, otherwise they are absolutely void. A donation must be by authentic act, before a notary, in the presence of two witnesses, otherwise it is absolutely void. A marriage contract must be executed before a notary, in the presence of two witnesses, otherwise it is absolutely void. None of these acts under private signature, although you may go before a notary and acknowledge them, are authentic acts; or you may go before a notary and make "a deposit" of them, for instance. An act under private signature is perfectly good, but the party must prove it in court by competent testimony, like any other instrument. The registration of an act under private signature is perfectly valid, but a copy of it, furnished by the registrar, is not at all admissible as evidence; you must produce the original document; therefore all acts under private signature must be proved before a court or justice, in order to establish a title conveyed by them. But in the case of authentic acts, a copy certified to be a true copy by the notary is always conclusive evidence, unless the party denies the genuineness of his signature; in that event the original document is produced for the purpose of establishing the genuineness of the signature.

Mr. Gantt:

Then, as I understand it, an act under private signature does not become an archive?

Mr. Semmes:

No, sir; it remains in the possession of the grantee, unless he chooses to make a deposit of it with a notary, and then gets from the notary a certified copy of the instrument and of the act of deposit; but that certified copy of the instrument and of the act of deposit is not evidence.

Mr. Gantt:

I suppose in case the original were lost then the copy would be admissible.

Mr. Semmes:

Yes, sir; on proof of the loss of the original, it would then stand like any other secondary evidence, but it is not of itself evidence; the only instrument which is evidence is a certified copy of an authentic act, which is deposited, as I said, by the notary, and preserved by him, and preserved under the authority of the state; so that in Louisiana to-day you can go back to the foundation of the colony and see the original signatures of the parties who acquired and sold the property.

Mr. Gantt:

So that a copy of an authentic act is for all practical purposes an original?

Mr. Semmes:

Yes, sir; and it has such force that unless a party under oath shall deny the verity of the instrument, its genuineness cannot be inquired into; therefore you perceive the evils suggested by Judge Cooley are obviated in Louisiana.

Now, as to an instrument executed abroad. No instrument executed abroad is authentic in Louisiana unless it shall have been acknowledged before a Louisiana Commissioner in any of the other states, or in foreign countries before an American Consul or Vice Consul, or other officer of that character; therefore we are protected from fraud by the character of the officers abroad, and by Commissioners appointed by the Governor of Louisiana in the other states.

Mr. Rufus King, of Ohio:

How does a deed executed abroad become an authentic act in Louisiana?

Mr. Semmes:

It is made so by special act of legislature. That is an exception.

Mr. Gantt:

But, if I understand you, that deed, thus executed, must be deposited in Louisiana?

Mr. Semmes:

I was just about to mention a peculiarity connected with that. Where a deed is executed in any other state before a Louisiana Commissioner, or abroad before a representative of the United States Government, the original is delivered to the grantee. Now, they cannot put in a certified copy of that as evidence. It would not be admissible. The original must be produced. The Louisiana Commissioner abroad cannot give a certified copy, nor can the Consul abroad give a certified copy. In that case he has not in his possession the original. The grantee has it, and he must preserve it, and the way they preserve it is, that our registrar of conveyances will not register an original act, executed abroad before a United States Consul or a Louisiana Commissioner. He says, "I don't know these people." (He is presumed to know all the notaries of the state and their signatures.) "I don't know this Louisiana Commissioner; I don't know these officers abroad, and therefore I won't take the responsibility of registering this instrument." This compels the party to make a deposit of the instrument with a notary, and thereby it is transferred to the public archives. He then gets a certified copy of it and of the act of deposit, and that is taken to the conveyance office and registered there.

Our conveyances are not registered *in extenso*, only a mere abstract, giving the names of the parties, a description of the property, terms of the sale, and the price.

Mr. Iglehart:

What is the effect of that registration?

Mr. Semmes:

It is notice of the conveyance.

A Member:

Suppose a man after making a conveyance by a private deed should make a conveyance by an authentic act, does your law necessarily make the authentic act prevail, or is it affected by a question of actual notice or constructive notice?

Mr. Semmes:

If a conveyance under private signature is recorded, it is just as good notice as if executed before a notary.

The same Member:

Suppose it is not recorded?

Mr. Semmes:

Our system of registration is this as to conveyances and mortgages: Even if I know property has been previously mortgaged, and the mortgage not registered, or if it has been conveyed and the conveyance not registered, I can buy the property from the original vendor, and defeat the first vendee or the mortgagee.

A Member:

Even after he has gone into possession?

Mr. Semmes:

Yes; we have abrogated entirely the doctrine of notice, other than that resulting from registration.

Mr. A. Q. Keasbey:

Will you explain in what manner, when these authentic acts are made before notaries—there being fifty notaries in New Orleans, and two in each of the parishes—in what manner they become registered, so that parties making search can ascertain what conveyances have been made?

Mr. Semmes:

In the first place a notary is prohibited from passing an act of sale from A B to C D without obtaining from the registrar of conveyances a certificate to the effect that the property has not previously been sold to some one else; that is one protection. Under the system you can run back with great facility and ascertain whether the vendor has sold before or not.

Mr. Keasbey:

And when this authentic act is made, how is that communicated to the registrar, so that a party can go and search and find out what conveyances have been made?

Mr. Semmes:

The notary is required by law to perform a certain duty, and he does it; he does not deliver you a certified copy of the conveyance until it is recorded, and the recorder of conveyances certifies on the original preserved in the notary's office that this instrument has been recorded; so that you perceive the system is very complete.

Mr. Gantt:

Will you please tell us whether a conveyance of land in one parish or county can be recorded in another parish or county, or must that be done in the place where the land lies?

Mr. Semmes:

In every instance the instrument must be recorded where the land lies, so that when a deed conveys land in a certain parish, it must be recorded in that parish.

As to conventional mortgages in Louisiana, no man need go back beyond a period of ten years to ascertain encumbrances. If a mortgage is executed in 1850, and registered at that time, it becomes inoperative as a mortgage after the lapse of ten years, unless within that period it is re-recorded; if the person holding the mortgage fails to re-record it within ten years, and re-records it a day after, it takes rank as a mortgage from the

new registration, and not from the original registration; it must be reinscribed every ten years, and it must be done before the ten years elapse, in order to preserve its rank.

Mr. Gantt:

Suppose a mortgage is given in 1881 to secure a debt payable in 1892, eleven years from the date, what effect would that have?

Mr. Semmes:

As a mortgage it would have to be reinscribed before the maturing of the debt, and not only that: if you give a mortgage to secure a promissory note payable one year after date, the note is prescribed as we call it (which signifies barred by the statute of limitations in the common law phraseology) after the lapse of five years from maturity, and if the note is extinguished by prescription the mortgage falls with it. Prescription is a mode of extinguishment of the debt; it extinguishes the obligation. At common law only the party to the obligation can plead prescription, but with us, as it is a mode of extinguishing the obligation, any party who has an interest to show or establish that that obligation has been extinguished may plead prescription; hence, if I, as second mortgagee, show that a mortgage note has been extinguished by prescription, I can plead it, although the debtor refuses to do so; therefore it is not merely a plea that bars the remedy, but it is a method of extinguishing the obligation, like payment or novation.

Mr. Iglehart, of Indiana, inquired what advantage there was in the authentic act over the private signature as a protection against the fraud suggested by Judge Cooley.

Mr. Semmes:

Judge Cooley says the certified copy is absolute evidence, and that frauds can be perpetrated in consequence of the loss or destruction of the original. Now, with us, in order to show title by act under private signature, you must introduce the original deed; that is the protection from fraud in case of acts

under private signature; and in authentic acts the copy of the notary is evidence, while we provide for the preservation of the original. But acts under private signature are little resorted to, except in cases of accident, or in the country, where it is inconvenient to get a notary.

On motion of Henry Hitchcock, of Missouri, adjourned until 10 o'clock, Friday A. M., August 19th.

Friday, August 19, 1881.

The meeting was called to order at half past ten o'clock A. M., by the President.

36. L. P. Poland, of Vermont, on behalf of the Council, presented several names for membership.

(*See List of New Members at the end of the Minutes.*)

In no case was a ballot demanded, and the gentlemen became members by virtue of the report of the General Council.

37. Mr. Poland, Chairman of the General Council, announced that the Council were ready to report a list of officers for the ensuing year, and that Mr. O'Brien J. Atkinson, of Michigan, Secretary of the Council, would read the proposed list, which was done.

On motion, the Association voted on the general ticket as reported by the Council, resulting in the unanimous election of the gentlemen proposed therein for the respective offices.

38. Mr. Poland, Chairman of the Executive Committee, then made a report upon the resolution passed the preceding day, with reference to extending the time of the sessions. He said: By a vote of the Association yesterday, the Executive Committee were instructed to make some report, or give their views in relation to the time of holding our annual meetings, and also whether it might not be expedient to extend it beyond three days. We have had very little time to consider it, and

no time to make a written report of our conclusions. The majority of opinion in the Committee is that it would be better to adhere to three days; but it was quite evident that a very strong opinion prevailed in the Association yesterday that an additional day should be added.

The Executive Committee would like to have the matter submitted to the Association and determined by the members present, whether we shall assemble a day earlier in the week—Tuesday—next year, and hold the Convention four days. The Committee are clearly of opinion that it ought not to be extended beyond four days. A great many members who desire to attend the meetings of the Association cannot spare more than one week; so that, allowing a day to come and a day to go home, and four days' Convention, that would occupy a whole week. We would therefore suggest that it be submitted to the Association whether or not we shall meet on the second Tuesday of August next year, and continue in session four days.

John W. Stevenson, of Kentucky, moved "That the Association meet on the second Tuesday of August, and that the time be extended to four days."

Isaac D. Jones, of Maryland, seconded the resolution.

Mr. Monaghan, of Pennsylvania, stated that if the proposed time in the month was adopted, he should be debarred the pleasure of attending, as a term of court was holden at that time in his district.

Mr. Stockbridge, of Maryland, proposed that the question be divided and taken under its separate heads, as to date and time of meeting.

The Chair then put the first question, viz., "Shall the Association meet on the second Tuesday in August next year?" and it was decided in the affirmative.

The question was then put, and it was voted to hold the next annual meeting through four days.

only two methods considered adequate to meet the emergency, namely, the one I have just stated and the plan suggested—to increase the number of judges in the Supreme Court, and permit the court to divide itself into sections, each section sitting at the same time; and the other creating intermediate courts of appeal, and abridging the present appellate jurisdiction of the Supreme Court.

John W. Cary, of Wisconsin:

We are all somewhat influenced in this matter by our location. Mr. Merrick, who lives at Washington, is in favor of the remedy of increasing the number of judges and dividing the Supreme Court into sections. I have no objection to that being done; but in the shape that the matter is presented here, it seems to me that the adoption of this resolution as the sense of this Association would be equivalent to deciding in favor of that as against the other proposition of intermediate courts. Now, speaking for my section of the country, I am satisfied that while they are not opposed to this alteration in the Supreme Court—and in fact many of us believe it is necessary—we are also in favor of the establishment of intermediate courts of appeal. We can have but one of these methods adopted, and I believe that to be the most efficient means of doing away with the present obstruction that we now experience in our highest appellate courts. This method has been tried in the state of Illinois, where their Supreme Court was completely swamped with the amount of appeals before it. They established in that state four intermediate courts—appellate courts—certain of the district and circuit judges to hold court for that purpose; and this system has had the effect of lessening the appeals to the Supreme Court to the degree that they are now able to transact their business successfully and to keep up with their work, at least that was the opinion Judge Sheldon expressed to me. Now, in regard to this matter of having appeals go directly to Washington, it is a practical denial of appeal to us, at least, in our section of the country.

If an expression of its opinion is to be made at this session by the Association, I am certainly in favor of an expression in favor of the adoption of intermediate courts of appeal.

J. Hubley Ashton, of Washington:

Mr. Merrick's resolution does not seem to me to meet the case in a satisfactory manner; I therefore offer the following as a substitute for Mr. Merrick's amendment:

Resolved, That Congress is earnestly requested to provide, at as early a date as may be practicable, an adequate remedy for the delays now incident to the final determination of suits pending in the highest courts of the United States, especially the Supreme Court of the United States.

The Chair:

The question is upon the adoption of the substitute of Mr. Ashton for Mr. Merrick's amendment. Is the House ready for the question?

Alvan P. Hyde, of Connecticut:

The three propositions now before the House are three different means of arriving at the same result. I am not ready to express myself in favor of the method suggested by Mr. Merrick, and I merely wish to ask him one or two questions—whether his mode does not in effect establish two or three Supreme Courts to determine questions between individuals, while he has a consolidated court to determine constitutional questions; whether that is not a little incongruous, to have one kind of a tribunal to decide rights between citizens and another to decide constitutional questions, when the Constitution prescribes one Supreme Court.

Mr. Merrick:

Without going into a discussion, I will answer the questions propounded by the gentleman. The resolution proposes to establish one Supreme Court, and to provide for different modes in which that Supreme Court may exercise the juris-

diction to be vested in it. The Constitution provides that the judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may from time to time establish. It then goes on in the judicial article and vests in the Supreme Court of the United States certain original jurisdiction—we cannot interfere with that. The resolution I have offered expresses, as the sense of this meeting, that in reference to that original jurisdiction and its exercise, the judges shall sit together and that not less than two-thirds of them shall constitute a quorum. The resolution further provides, that in reference to constitutional questions, and the determination of cases involving the construction and application of any provision of the Constitution, the judges shall again sit together to meet the requirements of the Constitution of the United States, and all members of the Association will appreciate that, where a question of constitutional construction arises, it is eminently proper, not only in order to have it wisely and well determined, but to pacify the public mind and satisfy all men that the determination reached emanated from the whole judicial force of the court of last resort, brought into consolidation upon that question.

As the court is now made up, sometimes there are not more than one-half of the judges present when a constitutional question arises, and perhaps by a majority of one in that half are decided questions of the most vital importance. My friend asks me if it is not establishing one Supreme Court for one purpose, and subdivisions for another; it certainly is, but only one Supreme Court is created by the proposition, and in reference to certain questions that court sits altogether as one court, which it really is; but with reference to private litigation, the resolution provides a division of the labor of that court by dividing itself into sections, each having equal power with the court as it is now organized. For instance, one section taking questions of common law, another chancery, another admiralty and revenue, and, if you choose, criminal questions in another; for there ought to be some appeal to the court of last resort in

certain criminal cases. But do not let us get confused by a name; it is still a Supreme Court, and *one* Supreme Court, and will sit undivided upon constitutional questions and those of original jurisdiction, while in questions of private litigation, a section of that court will try such questions as may come under its respective department, and each of these sections will be as large and strong, or nearly as large and strong, as the present Supreme Court of the United States.

R. Wayne Parker, of New Jersey:

I feel as if this question must be discussed, and that it needs and should have such consideration as we can give it. The necessity of some improvement and change is already apparent to Congress, and it would seem a waste of time merely to recommend them to devise some remedy, as is proposed in the last substitute offered; it seems, too, worse than idle to refer it to a committee to report next year; if we do anything we must do it *now*.

I think those versed in the system of the English common law will no doubt favor the amendment offered by Mr. Merrick. There are only two systems of the judiciary in the world—one is the English system, which prevails in that country and this. In England it consisted of nine judges, namely, three in the Court of Exchequer, three in the Common Pleas, and three in the King's Bench; they get through their work of appeal by a division of labor, and at the same time the best minds in the land, sitting in the courts of appeal, go to the circuits and bring the best thought and the best legal attainment of the land home to the jury trial.

There is only one other system—I call it the "Continental" system—it prevails over nearly the whole of Europe, and has the same faults. At the head is a judicial department of appeal, hearing nothing but appeal cases, and below that are the district courts which do nothing but try cases, and this system is in force in some of the United States. But let me point out a few considerations that have occurred to my mind against this system.

It does not give to the first trial of a cause the best talent, which should always be done, and where it is not done, the tendency is to multiply appeals, and, I might say, reversals. The existence of a high court of appeal having nothing to do but criticise, must tend, as it does tend, to the increase of reversals. It is human nature, and sometimes such a court will upset a case that has been decided with the utmost consideration by the judge below, merely because some immaterial point has been overlooked by the lower court.

But where the members of the courts below have a seat in the appellate court the system works well. That is the English system, and it has lasted for eight centuries. The work is divided between the three courts, or rather three divisions, and these three divisions sit together, as proposed by Mr. Merrick's resolution, in the Court of the Exchequer Chamber, hearing cases on final appeal. The division of the court is not exactly as suggested here by Mr. Merrick, but the principle is the same—a division of labor by a subdivision of the court into sections—although they do not put cases of one class in one court and of another class in another.

A few words as to the proposed system of intermediate courts. It is a bad thing for a country to have more than one appeal court; I am thoroughly convinced of that. More than one appeal makes more delay, and it is this eternal delay that is disgusting the people. I do not think the best legal minds would be content to accept a subordinate position, as it would be, in an inferior court of appeal.

The benefits derived by judges of the higher court would be very great if they were practically familiar with the work on the circuit. It would remove from their minds the spirit of criticism which would characterize them if they sat merely as a high court of appeal. Where we have a good man at the circuits trying cases, he wields an influence that is in harmony with the spirit of our institutions, that can never be obtained by any system of judges having nothing to do beyond the confined limit of their circuit court. It is possible you may get

good men, but I think that when you introduce that system, you introduce a system that is alien to the spirit of the English common law, which is, that the best men shall be placed in the highest and most dignified positions, and that they shall, by a division of labor, set apart various courts to various works, and send their members down and around, from time to time, among the people, so that the court expresses and carries out the spirit, and tends to the advancement and progress, of their institutions.

Thomas L. Bayne, of Louisiana:

I desire to say but a few words. I want to take up the view of Mr. Parker, expressed in the closing part of his remarks, as to the court having contact with the circuits, and the different systems of jurisprudence that prevail in the different circuits. Now, if you are going to cut the court up into subdivisions, you must send a member of each of these subdivisions into the several circuits if you propose to familiarize them with the people and with the jurisprudence of those circuits; that strikes me as impracticable.

It occurs to me that the people would be better satisfied to have the court located nearer to them, and I understand that among the suggestions in Congress for an intermediate court, one is for the circuit court to call the district judges into session for a period of time, and constitute thus an intermediate court of appeal which shall sit in the circuit. If that prevails it must tend to familiarize the judges with the systems of jurisprudence that prevail in the respective circuits.

Some suggestions may be made whereby can be rendered practicable the organization of subdivisions of the Supreme Court, but I do not see how it can be attained in the manner proposed. Then there is another view of the matter. If you cut the Supreme Court up into subdivisions you will necessarily impair the esteem of the court in the public mind. Whether there should be or not, I am not considering; but I think it is questionable whether there will be that deference to the opinion

of a subdivision of the court that there would be for an opinion of the whole court. But the leading idea which I intended to express was, that by having a system of intermediate courts we shall have judges who will have some contact with the systems of jurisprudence in the several states that are near to them, and the people will be better satisfied. They will have familiarity with the bar of those circuits, and that is a matter of consequence.

Mr. Merrick:

I would like to ask the gentleman what limit he would suggest upon the jurisdiction of the intermediate appellate court, and whether he would allow an appeal from that court to the Supreme Court of the United States, as now, and if so, whether he would impose any limit, and what, upon such appeals.

Mr. Bayne:

As I understand it, the several bills that have engaged the attention of Congress, and will engage their attention, have limits proposed; sometimes it has been a question of money, say ten or fifteen or twenty thousand dollars. I think if it is made determinate upon a question of money, it will reduce, to a large extent, the labor of the Supreme Court of the United States I do not feel that there might not be enlargements of the present court, but that the system of intermediate courts is the most practicable at the present time, and I believe it is the general sense of the country.

George A. Mercer, of Georgia:

The very great importance of the subject alone induces me to say a word in explanation of the vote I shall give. I agree with the gentleman from New Jersey (Mr. Parker), that the English system is the most appropriate system for this country, and to the people of any English-speaking country. No doubt the judges of the highest tribunals should mingle with the people and become familiar by practical contact with their systems of law. But it strikes me that we are about to com-

mit ourselves to a very grave thing if we adopt this resolution which has been suggested by Mr. Merrick. Shall we give it as the constitutional opinion of this body, that such a law is practicable and constitutional to be passed by ongress? I think there is not a lawyer in this body, if he ever considered that matter, who has not very grave doubts as to whether it is competent for Congress to divide one Supreme Court into sections. It is important that provision be made for more speedy determination of litigated questions; it is due to the people, justice demands it, and the profession demands it. The public have become disgusted with the system on account of the delays incident to it, and arbitration is largely coming into use. Take it in the locality where I live. Our principal business is the cotton business. If a dispute arises, it does not come into a court of law; business men say they cannot wait until it is decided by that lengthy process, taking three or four years, and perhaps longer; the result is, that almost every question is referred to the Cotton Exchange and settled by arbitration. I believe the same is true of leading cities in this country, where they have commercial exchanges, and it is to be charged to the manner in which business is conducted, and the long delays incident to a trial in a court of justice. It is of the utmost practical consequence that we should do what we can to speed the trial of cases; but are we prepared at this session, with no more attention to the subject than is covered by the brief debate it has received; are we prepared to give our opinion, as a body of lawyers gathered here, that Congress has the constitutional power to divide the Supreme Court into sections? As far as I am personally concerned, my doubts in that respect are so great that I deem it inadvisable to vote in favor of the amendment offered by the learned gentleman from Washington. I agree with him, that the necessity of doing something to facilitate the business exists, but what that something shall be, I don't think this body at the present moment is able to determine.

J. Hubley Ashton, of Washington:

I have prepared an additional resolution, which I offer in addition to my first, as a substitute for Mr. Merrick's amendment.

Resolved, That a select committee, consisting of the present President of the Association, and the President for the following year, and five other members, be appointed to wait upon Congress at its next session, and urge the matter of the first resolution upon its immediate consideration.

Rufus King, of Ohio:

I desire to ascertain whether that proposition, and the others, are limited to the Supreme Court of the United States, or whether anything is proposed in reference to the intermediate courts. All I have heard relates entirely to the head, leaving the body entirely neglected.

I can sympathize with the gentleman from Wisconsin. The Bar of this country looks to this Association for suggestions tending towards relief as much in the lower as in the higher courts. If a system like the English is adopted, we have this serious difficulty, that we have no House of Lords to review its decisions. I think the most practicable system of affording relief to the Supreme Court would be, to vest in the District Courts of the United States the original jurisdiction which the Circuit Courts now have, and to constitute an Appellate Circuit Court of three judges in each of the circuits of the United States. I am not of the opinion of the gentleman from New Jersey, that we cannot get good men for such a court. I am satisfied it would be the most effective and expeditious system of getting through with our business, which is really better than getting the very best legal talent.

If the question as it now stands is on the amendment, I should like to offer an amendment, to be inserted in one or the other of these propositions, for an intermediate court as well as the highest court.

Edward O. Hinkley, of Maryland:

A Senator from Maryland, now out of office, formerly Governor of our state, William P. Whyte, introduced at the last session of Congress a joint resolution in favor of amending the Constitution of the United States, for the purpose of having fixed therein the number of judges to constitute the Supreme Court of the United States. His remarks on the occasion of introducing his resolution in Congress will be found in the *Congressional Record.* I do not propose to say anything upon the past history of the country on that point, nor do I propose to say anything about that which I think will be apparent to every man almost at the instant it is mentioned, that in this respect there is a defect in the Constitution of the United States, namely, that no provision is made, in constituting the Supreme Court, for the number of its judges. Whatever is done in respect to this question, it seems to me it is a constitutional matter, and should be fixed inviolably in the Constitution. The subject seems to me to be of sufficient importance for offering these suggestions to the consideration of gentlemen; certainly something should be done in the matter.

Henry Wise Garnett, of Washington:

This substitute amendment, as I understand it, merely suggests that we recommend Congress to do something. That appears to me almost worth nothing. The urgent need of "doing something" is apparent to everybody; Congress have already recognized the expediency of doing something. But what does the American Bar Association desire shall be done? Have they any suggestions to make? This is the question that might properly be asked. I think we ought to be as willing and ready to express some opinion as to a course to be taken, as we are to expect Congress will be to act. I hope, therefore, that the Association will definitely express its views in some shape.

Charles S. Bradley, of Rhode Island:

Here are two different plans suggested, and there are now two measures in Congress tending towards a remedy of the

evil existing. With one of these measures Mr. Merrick professes himself to be entirely familiar, but of the other he professes to have little or no knowledge. But the Bar of this country know that that other measure was presented by a member of this Association standing high in the confidence of the Bar and of the country, and that that measure was presented by him, after preparation, under the counsel and advice of many of the most eminent members of the profession, and, we may assume, not without the knowledge and concurrence of the judges themselves.

Now, we are asked here to pronounce upon these two measures; the one to which I last referred being in the Senate and the other pending in the House. How shall we act upon that question? Shall we decide it impromptu, after a brief half hour's discussion? Is that worthy of the character of a body of men representing the deliberate judgment of the Bar of this country? I will not discuss the question now; I do not feel prepared to discuss it. I only implore you, as an humble member of the Bar and of this Association, that you will not act so precipitately upon great questions like this. I can see practical difficulties to this scheme of enlarging the Supreme Court. I find it difficult in my mind to consider that by any legislative action you can make a part equal to the whole. I find another difficulty. You may talk theoretically about questions of law in one tribunal, and chancery in another; but we all know that chancery and law have struck hands in many parts of this country, and you cannot make that severance. In many respects the law is now exactly the same in both tribunals. What would be the result? You would have a decision one day from one body of judges, and another decision from another body, each belonging to the same tribunal, each properly calling themselves the Supreme Court, but each laying down a different decision upon matters involving the same question.

Gentlemen have spoken about the practice in England. In England they may legislate as they please, but we legislate under the restraint of a written Constitution which pronounces

that there shall be one Supreme Court. The question presented is a constitutional one, and is this body of gentlemen here to pass upon that constitutional question in the summary manner proposed? Suppose we sat here as a Senate or House of Representatives, would gentlemen here feel ready to pass upon this question now, and make a law of the system proposed by Mr. Merrick? Would we not want time to consider it? and if introduced as a bill should we not refer it to a committee? But I will not discuss it any more. I implore the Association to act as wise men who have not studied this subject. I know there are gentlemen on the floor who have considered it and who hold opposite views, but who do not wish to rise and present their views. I only ask you not to commit yourselves to any precipitate action. Have the subject referred, and when we do act it will be weighty action.

Thomas T. Gantt, of Missouri:

I merely want to make a suggestion in the way of proposing a plan which may accomplish the end desired by all. We must either make a reference of the matter to a committee, as proposed in the resolution of my colleague (Mr. Hitchcock), or run the risk of the results of hasty action. Now, I propose, if I am not violating some rule of the Association, that the motion shall be so modified as to provide for a larger committee, who shall ascertain the views of the members, and then make and publish their report when it is finished, without waiting for next year. It will not be a difficult matter for such a committee to get at the views entertained by members of the Association. The postal arrangements of the country will furnish abundant facilities, and the committee can make up a report embodying the views of the Association, or at least a majority of its members. It seems to me that would meet the case.

Mr. Hitchcock, of Missouri:

There is but one question before the House, no matter what form it may take, so important and overshadowing to the

Association itself that it may well be said to be the only question. It is the question which the distinguished member from Rhode Island so earnestly put in the shape of an entreaty to the Association that it should not compromise its own standing and dignity, its reputation, and, as I believe, its influence for good, by undertaking impromptu, off-hand, to deliver an utterance which will commit it to a proposition concerning which it has already appeared that the gravest constitutional doubts exist. That alone is sufficient to determine the question that we cannot act in a hasty manner. The purpose of the resolution first introduced, as you have already seen, was to bring the question to the attention of the Association. It is recognized to be a matter of great importance both to the Bar and the nation, and of course demands some expression of interest on our part; that is, it demands such effort as we may legitimately and prudently make towards affording relief. But we cannot now pass upon the merits of the respective methods at present before the country. As far as we are concerned in this meeting, we have had no information respecting one of the propositions. Mr. Merrick himself says that he is uninformed regarding its features. We are not in a position to be able to act; we are not prepared to commit this Association once for all to a position it must be ready to stand by, or to retire from, with whatever credit may be acquired by such a retreat. That is the only question before us. I will not discuss the merits of the respective schemes. We should be more familiar with them.

Luke P. Poland, of Vermont:

It seems to me we are not prepared to indicate properly any precise line of conduct or judgment in this matter. This matter, so far as the Supreme Court of the United States is concerned, is not a new subject; fifteen years ago this subject was before the Judiciary Committee of the Senate, and a bill was prepared and reported by that Committee to the Senate of the United States. That bill was substantially like the one now pending

for intermediate courts; that was supposed then to be probably the only remedy. It seems to me entirely clear that we are not prepared to express any judgment here without referring the matter to a committee for careful examination. I heartily coincide with the able gentleman from Rhode Island, Mr. Bradley, that we should act with a deliberation becoming the dignity of the Association, and I therefore move that the resolution, the amendments, and substitutes be all referred to the Committee on Jurisprudence and Law Reform.

Mr. Merrick:

If Judge Poland will excuse me for a moment, we have had some consultation about this matter, and I will offer as a substitute for Judge Poland's motion, that the Chair appoint a committee of nine members of this Association, including the President and incoming Presidents, and that this whole subject-matter be referred to that committee, and that they report between this time and the next annual meeting of the Association.

A. Porter Morse, of Washington, thought the best suggestion that had been made in regard to the matter was that coming from Mr. Gantt, which might be accepted as an amendment to the resolution of his colleague from Missouri, to the effect that there should be a larger committee than that provided for in the original resolution; said committee to prepare a report and to publish it at as early a date as practicable.

Mr. Alexander R. Lawton, of Georgia:

The inducements to speak on such a matter are great. It is not a new grievance, however, for the "law's delay" troubled people long before the time of Shakspeare, and to such an extent that it is one of the causes assigned as sufficient to induce a man to "shuffle off this mortal coil." But that is no reason why they should not be remedied. Notwithstanding the urgent need for speedy action, I think this is one of those matters in which it is more expedient to "make haste slowly." I fear we cannot

safely do more than refer it to a committee, and I trust that will be the disposition of the whole subject.

Mr. Hitchcock:

Mr. Merrick and I have agreed upon a resolution to be offered as a substitute for Judge Poland's, and the adoption of that resolution will terminate this discussion. I will read it:

Resolved, That a special committee, consisting of the President, the President for the next year, and seven other members, to be appointed by the President, be appointed, with instructions to inquire into what adequate remedy can be provided for the delays now incident to the final determination of suits pending in the highest courts of the United States, with power to prepare, and in their discretion to print their report or reports with all convenient speed, and that all the pending resolutions, substitutes, and amendments on this subject be referred to said committee.

Mr. Poland:

I will withdraw my motion, and allow this to be considered as the original motion.

The Chair then put to the meeting the question of the adoption of the motion last made. It was carried unanimously.

42. The Chair:

The next business in order is the report of the committee of which Mr. King is chairman, relative to the bankruptcy law.

Robert G. Street, of Texas:

I gave notice yesterday that I should call up the substitute I offered for this report. I have had some conversation with the chairman of this committee, Mr. King, and I think there is no desire, on his part, to have the report adopted; so that he is perfectly content to have it take the direction I have suggested. If that is done there will be nothing before the House.

Mr. King:

What I said to the gentleman from Texas was, that apparently we had got into such a dead-lock over the subject that it might be best to have the report lie over until next year. The result the committee have arrived at I think is clearly right. They were unanimous upon it. It resolves itself into a single proposition, viz., is it possible for Congress to give state courts jurisdiction outside of their own limit—viz., extra-territorial jurisdiction? If not, a bankrupt law could not be administered by state courts. Is any gentleman of opinion that it is in the power of Congress to invest in the state courts that power over individuals and rights extra-territorial? If so, and they are right, then the committee is wrong. We have based our report upon that ground.

A. Q. Keasbey, of New Jersey:

I have looked over the case referred to by Mr. Baldwin yesterday, and we ought to look into the matter a little further before we do anything definitely. I therefore move that the report lie upon the table until the next meeting of the Association.

The Chair then put the motion of Mr. Keasbey to the House, and it was adopted—tabling the report until next year's meeting.

43. The Chair:

The next unfinished business, and the only business remaining, is the resolution of Mr. Vaux upon the matter of a committee upon constitutional law.

Mr. Hinkley:

I do not see Mr. Vaux in the hall, Mr. President, and I move that the resolution be laid on the table, to be taken up next year.

Jacob Weart, of New Jersey, seconded the motion, and it was adopted.

44. The Chair then announced that agreeably to the vote of the Association, adopting the resolution last offered by Mr. Hitchcock, and pursuant to the terms of said resolution, he would appoint as such committee the following gentlemen:

John W. Stevenson, Kentucky; Henry Hitchcock, Missouri; Richard T. Merrick, Washington; Charles S. Bradley, Rhode Island; Cortlandt Parker, New Jersey; Rufus King, Ohio; Alexander R. Lawton, Georgia; Clarkson N. Potter, New York; Edward J. Phelps, Vermont.

45. On motion of Mr. Keasbey, of New Jersey, the paper of Mr. Wagner, read the previous evening, was referred to the Committee on Commercial Law.

46. The Chair then announced the appointment of the following gentlemen on the Committee on Publication:

Anthony Q. Keasbey, New Jersey; Charles S. Bradley, Rhode Island; Francis Rawle, Pennsylvania; Isaac D. Jones, Maryland; Charles N. Davenport, Vermont.

47. On motion of Rufus King, of Ohio, the Association then adjourned to meet at eight o'clock in the reception room at the Grand Union Hotel.

EDWARD OTIS HINKLEY,
Secretary.

REPORT

OF THE

TREASURER.

Saratoga Springs, August 17, 1881.

The Treasurer makes the following Report for the year ending August 16, 1881.

Dr.

Balance from last account, as audited,		$823 98
(By typographical error this balance appears in the printed report as $825.98.)		
Cash received from dues of members,		2,065 00
Total,		$2,888 98

Cr.

1880.			
Aug. 18.	By cash paid Register and letter book,	$5 65	
	Stationery, third meeting,	3 87	
	Bill poster,	1 50	
Aug. 20.	Stenographer, third meeting,	40 00	
	Rent of hall, third meeting,	90 00	
	Clerk to Executive Committee,	22 70	
	Janitor of hall,	7 00	
Aug. 24.	Postage, etc.,	1 33	
Aug. 25.	Printing cards and notices,	14 25	
Sept. 17.	For dinner, third meeting,	499 00	
	Stamps, etc.,	1 75	
Oct. 13.	Stamps, etc.,	2 30	
Oct. 18.	Printing,	5 00	
	Tin box,	7 75	
Nov. 13.	Express, etc.,	1 94	
Dec. 15.	Postage and express on reports,	101 24	
	Amounts carried forward,	$805 28	$2,888 98

1881.			
	Amounts brought forward,	$805 28	$2,888 98
Jan. 7.	Services in mailing reports and in preparation of same,	46 25	
Jan. 8.	Printing Third Annual Report,	480 30	
	Printing additional copies of addresses and papers,	66 13	
Jan. 17.	Stamps and telegram,	6 50	
	Printing notices,	8 25	
Feb. 2.	Stamps and telegram, etc.,	4 99	
Aug. 13.	Printing envelopes,	3 62	
	Printing notices of meeting,	17 24	
	Secretary's bill of expenses,	14 00	
	Expenses of Executive Committee to New York, Feb. 12, 1881, by order of that Committee,	58 95	
	C. G. Artzt, expenses of dinner at fourth annual meeting,	39 00	
	Clerk to Treasurer, one year's services,	52 00	1,602 51
	Balance on hand,		$1,286 47
	Which consists of—		
	Cash to the credit of the Treasurer in the Philadelphia Trust, Safe Deposit, and Insurance Company,	$1,223 86	
	Cash in hand,	62 61	$1,286 47

Respectfully submitted.

FRANCIS RAWLE,
Treasurer.

Audited and found correct, August 17, 1881.

ALVAN P. HYDE,
CHARLES N. DAVENPORT,
Auditing Committee.

LIST OF NEW MEMBERS.

ALABAMA.

Clark, Gaylord B.,	Mobile.

CALIFORNIA.

Carpentier, Edward W.,	San Francisco.

CONNECTICUT.

Kellogg, Stephen W.,	Waterbury.
Townsend, William K.,	New Haven.

DISTRICT OF COLUMBIA.

Appleby, George F.,	Washington.
Blair, Woodbury,	Washington.
Garnett, Henry Wise,	Washington.
Hanna, John F.,	Washington.
Kent, Linden,	Washington.
Johnston, James M.,	Washington.
Johnston, Sanders W.,	Washington.
Selden, John,	Washington.

FLORIDA.

Randall, E. M.,	Jacksonville.

GEORGIA.

Bartlett, Charles L.,	Macon.
Black, J. C. C.,	Augusta.
Charlton, Walter G.,	Savannah.
Cumming, Joseph B.,	Augusta.
Cunningham, Henry C.,	Savannah.

INDIANA.

Nebeker, Lucas,	Covington.

KANSAS.

Buck, J. Jay,	Emporia.

KENTUCKY.

JOHNSON, CHARLES,	Lexington.
SCOTT, C. S.,	Lexington.
TRABUE, E. F.,	Louisville.
WHARTON, GABRIEL T.,	Louisville.

LOUISIANA.

BENEDICT, W. S.,	New Orleans.
HOWE, W. W.,	New Orleans.

MARYLAND.

ALBERT, TALBOT J.,	Baltimore.
BROWN, SEBASTIAN,	Baltimore.
CONRAD, LOUIS L.,	Baltimore.
JONES, ISAAC D.,	Baltimore.
PAGE, HENRY,	Princess Anne.
WILLIAMS, EDWARD CALVIN,	Baltimore.

MASSACHUSETTS.

BARTLETT, SIDNEY,	Boston.
BISHOP, ROBERT R.,	Boston.
BRAGG, HENRY W.,	Boston.
BRALEY, HENRY K.,	Fall River.
DENISON, ARTHUR E.,	Boston.
DODGE, JOHN C.,	Boston.
FITZGERALD, JOHN E.,	Boston.
FORBUSH, GEORGE S.,	Boston.
FOSTER, DWIGHT,	Boston.
FULLER, HENRY,	Westfield.
HATHEWAY, SIMON W.,	Boston.
HOAR, EBENEZER ROCKWOOD,	Boston.
HUBBARD, CHARLES EUSTIS,	Boston.
LINCOLN, CHARLES SPRAGUE,	Boston.
MERWIN, ELIAS,	Boston.
MUNROE, WILLIAM A.,	Boston.
RUSSELL, WILLIAM G.,	Boston.
SEARS, PHILIP H.,	Boston.
SHATTUCK, GEORGE O.,	Boston.
SMITH, CHAUNCEY,	Boston.
STOREY, MOORFIELD,	Boston.
TIRRELL, CHARLES Q.,	Natick.

MISSISSIPPI.

BRAUN, L.,	Jackson.
MACFARLAND, BAXTER,	Aberdeen.
WHITFIELD, F. E.,	Corinth.

MISSOURI.

GANTT, THOMAS T.,	St. Louis.
HOUGH, WARWICK,	Jefferson City.
RANKIN, JOHN H.,	St. Louis.

NEW HAMPSHIRE.

BURNHAM, HENRY E.,	Manchester.
CHASE, WILLIAM M.,	Concord.
CURRIER, FRANK D.,	E. Canaan.
MITCHELL, JOHN N.,	Concord.
PIKE, AUSTIN F.,	Franklin.
WHIPPLE, THOMAS J.,	Laconia.

NEW JERSEY.

FLEMMING, JAMES,	Jersey City.
HERBERT, JOHN W., JR.,	Jersey City.
RANDOLPH, JOSEPH F.,	Jersey City.
RICHEY, AUGUSTUS G.,	Trenton.
SCUDDER, ISAAC W.,	Jersey City.
SHREVE, E. MERCER,	Trenton.

NEW YORK.

BUTLER, BENJAMIN C.,	Lucerne.
CROWELL, CHARLES E.,	New York.
DILLON, JOHN F.,	New York.
FOX, AUSTEN G.,	New York.
HUTCHINS, WALDO,	New York.
JEWETT, HUGH J.,	New York.
LEEDS, CHARLES C.,	New York.
MALONE, PHILIP,	New York.
SPIER, GILBERT M., JR.,	New York.
TODD, A. J.,	New York.

NORTH CAROLINA.

BOYD, JAMES E.,	Greensboro.
FULLER, THOMAS,	Raleigh.
STAPLES, JOHN N.,	Greensboro.

OHIO.

BAKER, WILLIAM,	Toledo.
BALL, FLAVEN,	Cincinnati.
COX, JACOB D.,	Cincinnati.
DAVIDSON, WILLIAM A.,	Cincinnati.
GREEN, EDWIN P.,	Akron.

OHIO—Continued.

GRINCKEL, LEWIS B.,	Dayton.
HAYNES, DAVID A.,	Dayton.
HODGE, NOAH,	Akron.
MARSHALL, R. D.,	Dayton.
MUNGER, WARREN,	Dayton.
RANNEY, HENRY C.,	Cleveland.
UPSON, WILLIAM H.,	Akron.
YOUNG, EDMUND S.,	Dayton.

PENNSYLVANIA.

CRAWFORD, GEORGE L.,	Philadelphia.
DARLING, J. VAUGHAN,	Wilkesbarre.
HAND, ALFRED,	Scranton.
HANDLEY, JOHN,	Scranton.
HUEY, SAMUEL B.,	Philadelphia.
PATTERSON, C. STUART,	Philadelphia.
PETIT, SILAS E.,	Philadelphia.
WILLARD, EDWARD N.,	Scranton.
WILTBANK, WILLIAM W.,	Philadelphia.

SOUTH CAROLINA.

BENET, WILLIAM C.,	Abbeville.
MCMASTERS, F. W.,	Columbia.

TENNESSEE.

BAILEY, JAMES E.,	Clarksville.
BATE, H. R.,	Covington.
BROWN, JOHN C.,	Pulaski.
BURTON, JOHN W.,	Murfreesboro.
COOPER, EDMUND,	Shelbyville.
EWING, EDWIN H.,	Murfreesboro.
FENTRESS, JAMES,	Bolivar.
FLIPPEN, T. J.,	Somerville.
FREEMAN, THOMAS J.,	Trenton.
HARRISS, ISHAM G.,	Memphis.
HOUSE, JOHN F.,	Clarksville.
HOUSE, WILLIAM,	Franklin.
LAMB, J. B.,	Fayetteville.
LIVINGSTONE, H. J.,	Brownsville.
MARKS, A. S.,	Winchester.
MOORMAN, H. C.,	Somerville.
SHIELDS, JAMES T.,	Bean's Station.
STEELE, THOMAS,	Ripley.
WOOD, R. H.,	Bolivar.

TEXAS.

Ballinger, W. P.,	Galveston.
Crawford, W. S.,	Dallas.
Fulton, Marshall,	Denton.
Gaines, R. R.,	Clarksville.
Hutchinson, J. C.,	Houston.
Stockdale, F. S.,	Cuero.
Street, Robert G.,	Galveston.
Waul, T. W.,	Galveston.
West, C. F.,	Austin.
Willie, A. H.,	Galveston.

WEST VIRGINIA.

Goff, Nathan, Jr.,	
Hereford, Frank,	Union.

WISCONSIN.

Cary, Milbert B.,	Milwaukee.
Wegg, David S,	Milwaukee.

MEMORANDUM.

The Association gave a dinner to its members, at the Grand Union Hotel, on the evening of August 19, 1881. One hundred members were present. Richard T. Merrick, of Washington, District of Columbia, presided.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as "The American Bar Association." Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each annual meeting for the year ensuing:—A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state (the Council shall be a Standing Committee on nominations for office); an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be chairman of the Committee.

The following Committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

On Jurisprudence and Law Reform;

On Judicial Administration and Remedial Procedure;

On Legal Education and Admissions to the Bar;

On Commercial Law;

On International Law;

On Publications;

On Grievances.

A majority of those members of any Committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such Committee for the purposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be *ex officio* chairman of such Council.

A Committee of three, of whom the Secretary shall always be one, shall be appointed by the President, at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the Committee, be proper.

It shall be the duty of the Vice-President from each state and territory to report the deaths of members within the same to the said Committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations must be

transmitted, in writing, to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state.

All nominations thus made, or approved, shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association: *Provided*, That if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them, upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association, upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any annual meeting of the Association, by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such

dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states, and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*state*," wherever used in this Constitution, shall be deemed to be equivalent to *state, territory*, and the *District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:

(*a*) Opening Address of the President.
(*b*) Nominations and Election of Members.
(*c*) Election of the General Council.
(*d*) Reports of Secretary and Treasurer.
(*e*) Report of Executive Committee.
(*f*) Reports of Standing Committees,
On Jurisprudence and Law Reform;
On Judicial Administration and Remedial Procedure;
On Legal Education and Admissions to the Bar;
On Commercial Law;
On International Law;
On Publications;
On Grievances.
(*g*) Reports of Special Committees.
(*h*) The Nomination of Officers.
(*i*) Miscellaneous Business.
(*j*) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject..

A stenographer shall be employed at each Annual Meeting.

IV.—Each state Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country, or of any state, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the Reports of Committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of Reports, Addresses, and Papers read before the Association, may be printed by the Committee on Publications, for the use of their authors, not exceeding two hundred copies to each of such authors.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary; and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all Standing Committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If, at any Annual Meeting of the Association, any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

ANNUAL DUES.

XIII.—The annual dues shall be payable at the Annual Meeting, in advance; if any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

PRESIDENT,

CLARKSON N. POTTER,

New York, New York.

SECRETARY,

EDWARD OTIS HINKLEY,

No. 43 North Charles Street, Baltimore, Maryland.

TREASURER,

FRANCIS RAWLE,

No. 402 Walnut Street, Philadelphia, Pennsylvania.

EXECUTIVE COMMITTEE.

LUKE P. POLAND, *St. Johnsbury, Vermont*, CHAIRMAN.
SIMEON E. BALDWIN, *New Haven, Connecticut.*
WM. ALLEN BUTLER, *New York, New York.*

EX-OFFICIO.

EDWARD OTIS HINKLEY, SECRETARY.
FRANCIS RAWLE, TREASURER.

COUNCIL.

Alabama,	LUTHER R. SMITH.
Arkansas,	J. M. MOORE.
Connecticut,	ROGER AVERILL.
California,	EDWARD W. CARPENTIER.
District of Columbia,	J. HUBLEY ASHTON.
Florida,	E. M. RANDALL.
Georgia,	GEORGE A. MERCER.
Illinois,	THOMAS HOYNE.
Indiana,	ASA IGLEHART.
Kentucky,	JOHN W. STEVENSON.
Louisiana,	CARLETON HUNT.
Maine,	ALMON A. STROUT.
Maryland,	JOHN K. COWEN.
Massachusetts,	EDMUND H. BENNETT.
Michigan,	O'BRIEN J. ATKINSON.
Mississippi,	JOSEPH E. LEIGH.
Missouri,	JAMES O. BROADHEAD.
Nebraska,	CHARLES F. MANDERSON.
New Hampshire,	JOHN M. SHIRLEY.
New Jersey,	JACOB WEART.
New York,	BENJAMIN A. WILLIS.
North Carolina,	THOMAS B. KEOGH.
Ohio,	WILLIAM H. UPSON.
Pennsylvania,	HUGH M. NORTH.
South Carolina,	F. W. MCMASTERS.
Tennessee,	ALBERT T. MCNEAL.
Texas,	ROBERT G. STREET.
Vermont,	LUKE P. POLAND.
Virginia,	ROBERT OULD.
West Virginia,	JOHN A. HUTCHINSON.
Wisconsin,	JOHN W. CARY.

VICE-PRESIDENTS

AND

MEMBERS OF LOCAL COUNCILS.

ALABAMA.—Vice-President, THOMAS H. WATTS.
Local Council, D. S. TROY, WALTER S. BRAGG.

ARKANSAS.—Vice-President, JAMES C. TAPPAN.
Local Council, U. M. ROSE, P. O. THWEATT.

CALIFORNIA.—Vice-President, JOHN N. POMEROY.
Local Council, EDWARD W. CARPENTIER.

CONNECTICUT.—Vice-President, ALVAN P. HYDE.
Local Council, LYMAN D. BREWSTER, JOHNSON T. PLATT, GILBERT W. PHILLIPS.

DELAWARE.—Vice-President, THOMAS F. BAYARD.
Local Council, ANTHONY HIGGINS.

DISTRICT OF COLUMBIA.—Vice-President, H. H. WELLS.
Local Council, RICHARD T. MERRICK, NATHANIEL WILSON.

FLORIDA.—Vice President, EDWIN M. RANDALL.

GEORGIA.—Vice-President, ALEXANDER R. LAWTON.
Local Council, N. J. HAMMOND, L. N. WHITTLE.

ILLINOIS.—Vice-President, DAVID DAVIS.
Local Council, BENJAMIN F. AYER, LYMAN TRUMBULL, GUSTAVE KOERNER.

INDIANA.—Vice-President, BENJAMIN HARRISON.
Local Council, J. A. S. MITCHELL, ABRAM W. HENDRICKS, ROBERT S. TAYLOR, JOHN M. BUTLER.

IOWA.—Vice-President, GEORGE G. WRIGHT.
Local Council, OLIVER P. SHIRAS, JOHN N. ROGERS.

KENTUCKY.—Vice-President, WILLIAM PRESTON.
Local Council, JOHN W. STEVENSON, JOHN MASON BROWN.

LOUISIANA.—Vice-President, F. P. POCHÉ.
Local Council, THOMAS J. SEMMES, THOMAS L. BAYNE.

MAINE.—Vice-President, NATHAN WEBB.
Local Council, F. A. WILSON.

MARYLAND.—Vice-President, RICHARD J. GITTINGS.
Local Council, A. LEO KNOTT, RICHARD M. VENABLE, HENRY STOCKBRIDGE, JULIAN J. ALEXANDER.

MASSACHUSETTS.—Vice-President, WILLIAM GASTON.
Local Council, LEONARD A. JONES, FRANK GOODWIN, CHARLES W. CLIFFORD.

MICHIGAN.—Vice-President, THOMAS M. COOLEY.
Local Council, HARRISON GEER, D. DARWIN HUGHES, W. P. WELLS.

MISSISSIPPI.—Vice-President, LOCK E. HOUSTON.
Local Council, R. O. REYNOLDS, L. BRAME.

MISSOURI.—Vice-President, HENRY HITCHCOCK.
Local Council, PHILEMON BLISS, EDWARD C. KEHR, WARWICK HOUGH.

NEBRASKA.—Vice-President, JAMES M. WOOLWORTH.
Local Council, JAMES LAIRD, CHARLES F. MANDERSON.

NEW HAMPSHIRE.—Vice-President, WILLIAM S. LADD.
Local Council, CLINTON W. STANLEY, ALB'T S. WAIT, ALONZO P. CARPENTER.

NEW JERSEY.—Vice-President, ANTHONY Q. KEASBEY.
Local Council, WASHINGTON B. WILLIAMS, CHARLES BORCHERLING, R. WAYNE PARKER.

NEW YORK.—Vice-President, FRANCIS KERNAN.
Local Council, JOHN K. PORTER, NATHANIEL C. MOAK, E. F. BULLARD, SHERMAN S. ROGERS.

NORTH CAROLINA.—Vice-President, THOMAS FULLER.
Local Council, JAMES E. BOYD, JOHN N. STAPLES.

OHIO.—Vice President, RUFUS KING.
Local Council, STANLEY MATTHEWS, RUFUS P. RANNEY, J. D. COX, GEORGE W. HOUCK, D. A. HAYNES, ISAAC M. JORDAN.

PENNSYLVANIA.—Vice President GEORGE W. BIDDLE.
Local Council, ALBERT A. OUTERBRIDGE, HENRY GREEN, GEORGE SHIRAS, JR., HUGH M. NORTH, WILLIAM A. PORTER.

RHODE ISLAND.—Vice-President, CHARLES S. BRADLEY.
Local Council, BENJAMIN F. THURSTON, WILLIAM P. SHEFFIELD.

SOUTH CAROLINA.—Vice-President, HENRY E. YOUNG.
Local Council, C. D. SIMONTON, ROBERT W. BOYD.

TENNESSEE.—Vice-President, WILLIAM F. COOPER.
Local Council, BEDFORD M. ESTES, WILLIAM HOUSE.

TEXAS.—Vice-President, T. W. WAUL.
Local Council, F. S. STOCKDALE, J. C. HUTCHINSON, W. J. CRAWFORD.

VERMONT.—Vice-President, DANIEL ROBERTS.
Local Council, NORMAN PAUL, WHEELOCK G. VEAZEY.

VIRGINIA.—Vice President, J. RANDOLPH TUCKER.
Local Council, WILLIAM J. ROBERTSON, LEGH R. PAGE.

WEST VIRGINIA.—Vice-President, EDWARD B. KNIGHT.
Local Council, JOHN A. HUTCHINSON.

WISCONSIN.—Vice-President, SILAS U. PINNEY.
Local Council, WILLIAM F. VILAS, ALFRED L. CAREY, EPHRAIM MARINER.

COMMITTEES.

ON JURISPRUDENCE AND LAW REFORM.

WILLIAM ALLEN BUTLER, New York, New York.
SIMEON E. BALDWIN, New Haven, Connecticut.
HENRY HITCHCOCK, St. Louis, Missouri.
GEORGE TUCKER BISPHAM, Philadelphia, Pennsylvania.
SKIPWITH WILMER, Baltimore, Maryland.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

RUFUS KING, Cincinnati, Ohio.
GEORGE W. BIDDLE, Philadelphia, Pennsylvania.
ALEXANDER R. LAWTON, Savannah, Georgia.
JOSEPH E. McDONALD, Indianapolis, Indiana.
RICHARD T. MERRICK, Washington, District of Columbia.

ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR.

CARLETON HUNT, New Orleans, Louisiana.
HENRY STOCKBRIDGE, Baltimore, Maryland.
U. M. ROSE, Little Rock, Arkansas.
GEORGE HOADLY, Cincinnati, Ohio.
EDMUND H. BENNETT, Taunton, Massachusetts.

ON COMMERCIAL LAW.

THOMAS J. SEMMES, New Orleans, Louisiana.
GEORGE A. MERCER, Savannah, Georgia.
JAMES T. MITCHELL, Philadelphia, Pennsylvania.
JOHN A. MacMAHON, Dayton, Ohio.
WILLIAM J. ROBERTSON, Charlottesville, Virginia.

ON INTERNATIONAL LAW.

THOMAS M. COOLEY, Ann Arbor, Michigan.
JOHN W. STEVENSON, Covington, Kentucky.
JAMES O. BROADHEAD, St. Louis, Missouri.
JOHN E. WARD, New York, New York.
JAMES J. STORROW, Boston, Massachusetts.

ON PUBLICATIONS.

A. Q. KEASBEY, Newark, New Jersey.
CHARLES S. BRADLEY, Providence, Rhode Island.
FRANCIS RAWLE, Philadelphia, Pennsylvania.
ISAAC D. JONES, Baltimore, Maryland.
CHARLES N. DAVENPORT, Burlington, Vermont.

ON GRIEVANCES.

J. RANDOLPH TUCKER, Lexington, Virginia.
JAMES S. PIRTLE, Louisville, Kentucky.
JOHN N. POMEROY, San Francisco, California.
STEPHEN W. KELLOGG, Waterbury, Connecticut.
WASHINGTON B. WILLIAMS, New Jersey.

ON OBITUARIES.

EDWARD O. HINKLEY, Baltimore, Maryland.
EVERETT P. WHEELER, New York, New York.
HENRY HITCHCOCK, St. Louis, Missouri.

MEMBERS—AUGUST, 1881-1882.

ALABAMA.

Bragg, Walter S.,	Montgomery.
Buell, David,	Greenville.
Clark, Gaylord B.,	Mobile.
Clopton, David,	Montgomery.
Smith, Luther R.,	Mount Sterling.
Troy, D. S.,	Montgomery.
Watts, Thomas H.,	Montgomery.

ARKANSAS.

Benjamin, M. W.,	Little Rock.
Cohn, M. M.,	Little Rock.
Horner, John J.,	Helena.
Moore, J. M.,	Little Rock.
Rose, U. M.,	Little Rock.
Tappan, James C.,	Helena.
Thweatt, P. O.,	Helena.

CALIFORNIA.

Carpentier, Edward W.,	San Francisco.
Pomeroy, John N.,	San Francisco.

CONNECTICUT.

Adams, Sherman W.,	Hartford.
Averill, Roger,	Danbury.
Baldwin, Simeon E.,	New Haven.
Brewster, Lyman D.,	Danbury.
Cornwall, Horace,	Hartford.
Curtis, Julius B,	Stamford.
Hamersley, William,	Hartford.
Hubbard, Leverett M.,	New Haven.
Hyde, Alvan P.,	Hartford.
Kellogg, Stephen W.,	Waterbury.
Kingsbury, Frederick J.,	Waterbury.
Minor, William T.,	Stamford.

CONNECTICUT—Continued.

PARDEE, HENRY E.,	New Haven.
PHILLIPS, GILBERT W.,	Putnam.
PLATT, JOHNSON T.,	New Haven.
RUSSELL, TALCOTT H.,	New Haven.
SEYMOUR, EDWARD W.,	Litchfield.
TOWNSEND, WILLIAM K.,	New Haven.
WATROUS, GEORGE H.,	New Haven.
WILLCOX, W. F.,	Deep River.
WOODRUFF, GEORGE M.,	Litchfield.
WOODWARD, ASA B.,	Norwalk.

DELAWARE.

BAYARD, THOMAS F.,	Wilmington.
HIGGINS, ANTHONY,	Wilmington.

DISTRICT OF COLUMBIA.

APPLEBY, GEORGE F.,	Washington.
ASHTON, J. HUBLEY,	Washington.
BLAIR, WOODBURY,	Washington.
BOND, S. R.,	Washington.
GARNETT, HENRY WISE,	Washington.
HAGNER, A. B.,	Washington.
HANNA, JOHN F.,	Washington.
JOHNSTON, JAMES M.,	Washington.
JOHNSTON, SANDERS W.,	Washington.
KENT, LINDEN,	Washington.
MELOY, WILLIAM A.,	Washington.
MERRICK, RICHARD T.,	Washington.
MORRIS, M. F.,	Washington.
MORSE, A. PORTER,	Washington.
PORTER, A. G.,	Washington.
SELDEN, JOHN,	Washington.
WELLS, H. H.,	Washington.
WILSON, NATHANIEL,	Washington.

FLORIDA.

JONES, CHARLES W.,	Pensacola.
RANDALL, E. M.,	Jacksonville.

GEORGIA.

ANDERSON, CLIFFORD,	Macon.
BACON, AUGUSTUS O.,	Macon.
BARTLETT, CHARLES L.,	Macon.

GEORGIA—Continued.

BLACK, J. C. C.,	Augusta.
CHARLTON, WALTER G.,	Savannah.
CHISHOLM, WALTER S.,	Savannah.
CUMMING, JOSEPH B.,	Augusta.
CUNNINGHAM, HENRY C.,	Savannah.
ELY, ROBERT N.,	Atlanta.
HAMMOND, N. J.,	Atlanta.
JACKSON, HENRY,	Atlanta.
JONES, CHARLES C., Jr.,	Augusta.
LAWTON, ALEXANDER R.,	Savannah.
LYON, R. F.,	Macon.
MERCER, GEORGE A.,	Savannah.
MILLER, FRANK H.,	Augusta.
TOMPKINS, HENRY B.,	Savannah.
WHITTLE, L. N.,	Macon.

ILLINOIS.

AYER, B. F.,	Chicago.
CATON, JOHN DEAN,	Chicago.
DAVIS, DAVID,	Bloomington.
HOYNE, THOMAS,	Chicago.
KOERNER, GUSTAVE,	Belleville.
MASON, EDWARD G.,	Chicago.
STORRS, EMORY A.,	Chicago.
TRUMBULL, LYMAN,	Chicago.

INDIANA.

ALDRICH, CHARLES H.,	Fort Wayne.
BEST, JAMES J.,	Waterloo.
BUTLER, JOHN M.,	Indianapolis.
DAVIDSON, THOMAS F.,	Covington.
DYER, AZRO,	Evansville.
FAIRBANKS, CHARLES W.,	Indianapolis.
FISHBACK, W. P.,	Indianapolis.
HARRIS, A. C.,	Indianapolis.
HARRISON, BENJAMIN,	Indianapolis.
HENDRICKS, A. W.,	Indianapolis.
HENDRICKS, THOMAS A.,	Indianapolis.
HINES, C. C.,	Indianapolis.
HORD, OSCAR B.,	Indianapolis.
IGLEHART, ASA,	Evansville.
MCDONALD, JOSEPH E.,	Indianapolis.
MILLER, WILLIAM H. H.,	Indianapolis.

INDIANA—Continued.

MITCHELL, JOSEPH A. S.,	Goshen.
NEBEKER, LUCAS,	Covington.
ROBERTSON, R. S.,	Fort Wayne.
TAYLOR, R. S.,	Fort Wayne.
WILSON, JOHN R.,	Indianapolis.
WILSON, W. C.,	La Fayette.
ZOLLARS, ALLEN,	Fort Wayne.

IOWA.

ROGERS, JOHN N.,	Davenport.
SHIRAS, OLIVER P.,	Dubuque.
WRIGHT, GEORGE G.,	Des Moines.

KANSAS.

BUCK, J. JAY,	Emporia.
FEIGHAN, JOHN W.,	Emporia.
GUTHRIE, JOHN,	Topeka.

KENTUCKY.

BECK, JAMES B.,	Lexington.
BENTON, JOHN C.,	Covington.
BIJUR, MARTIN,	Louisville.
BRECKINRIDGE, WM. C. P.,	Lexington.
BROWN, JOHN MASON,	Louisville.
BUCKNER, B. F.,	Lexington.
DAVIE, GEORGE M.,	Louisville.
JOHNSON, CHARLES,	Lexington.
MOORE, J. Z.,	Owensboro.
PIRTLE, JAMES S.,	Louisville.
PRESTON, WILLIAM,	Lexington.
SCOTT, C. S.,	Lexington.
STEVENSON, JOHN W.,	Covington.
THORNTON, ROBERT A.,	Lexington.
TRABUE, E. F.,	Louisville.
WHARTON, GABRIEL T.,	Louisville.
WILLSON, A. E.,	Louisville.

LOUISIANA.

ACKLEN, JOSEPH H.,	Franklin.
BAYNE, THOMAS L.,	New Orleans.
BENEDICT, W. S.,	New Orleans.
BREAUX, G. A.,	New Orleans.
GILLMORE, THOMAS,	New Orleans.

LOUISIANA—Continued.

HOWE, W. W.,	New Orleans.
HUNT, CARLETON,	New Orleans.
MERRICK, EDWIN T.,	New Orleans.
POCHÉ, F. P.,	St. James.
RACE, GEORGE W.,	New Orleans.
SEMMES, THOMAS J.,	New Orleans.

MAINE.

BAKER, ORVILLE D.,	Augusta.
CLEAVES, NATHAN,	Portland.
FESSENDEN, JAMES D.,	Portland.
GOULD, A. P.,	Thomaston.
HOLMES, GEORGE F,	Portland.
STETSON, CHARLES P.,	Bangor.
STROUT, A. A.,	Portland.
WEBB, NATHAN,	Portland.
WILSON, F. A,	Bangor.

MARYLAND.

ALBERT, TALBOT J.,	Baltimore.
ALEXANDER, JULIAN J.,	Baltimore.
BEASTEN, CHARLES, Jr.,	Baltimore.
BOARMAN, ROBERT R.,	Towsontown.
BONAPARTE, CHARLES J.,	Baltimore.
BROWN, SEBASTIAN,	Baltimore.
CONRAD, LOUIS L.,	Baltimore.
COWEN, JOHN K.,	Baltimore.
CROSS, E. J. D.,	Baltimore.
FISHER, WILLIAM A.,	Baltimore.
GITTINGS, RICHARD J.,	Baltimore.
HINKLEY, EDWARD OTIS,	Baltimore.
JONES, ISAAC D.,	Baltimore.
KEENE, JOHN H.,	Baltimore.
KNOTT, A. LEO,	Baltimore.
LATROBE, JOHN H. B.,	Baltimore.
MARSHALL, CHARLES,	Baltimore.
MASON, JOHN T., (JOHN T. MASON, R.),	Baltimore.
MCINTOSH, DAVID G.,	Towsontown.
PAGE, HENRY,	Princess Anne.
ROBERTS, JOSEPH K., Jr.,	Upper Marlboro.
SHARP, GEORGE M.,	Baltimore.
SMALL, ALBERT,	Hagerstown.
STOCKBRIDGE, HENRY,	Baltimore.

MARYLAND—Continued.

TAYLOR, ARCHIBALD H.,	Baltimore.
VENABLE, RICHARD M.,	Baltimore.
WILLIAMS, EDWARD CALVIN,	Baltimore.
WILMER, SKIPWITH,	Baltimore.

MASSACHUSETTS.

ALLEN, STILLMAN B.,	Boston.
BALDWIN, G. W.,	Boston.
BARTLETT, SIDNEY,	Boston.
BELL, C. U.,	Lawrence.
BENNETT, EDMUND H.,	Taunton.
BISHOP, ROBERT R.,	Boston.
BRAGG, HENRY W.,	Boston.
BRALEY, HENRY K.,	Fall River.
BROOKS, FRANCIS A.,	Boston.
BULLOCK, A. G.,	Worcester.
CHANDLER, ALFRED D.,	Boston.
CLIFFORD, CHARLES W.,	New Bedford.
CODMAN, ROBERT,	Boston.
CRAPO, WILLIAM W.,	New Bedford.
DENISON, ARTHUR E.,	Boston.
DODGE, JOHN C.,	Boston.
ENDICOTT, WILLIAM C.,	Salem.
ERNST, GEORGE A. O.,	Boston.
FITZGERALD, JOHN E.,	Boston.
FORBUSH, GEORGE S.,	Boston.
FOSTER, DWIGHT,	Boston.
FOX, WILLIAM H.,	Taunton.
FULLER, HENRY,	Westfield.
FRENCH, WILLIAM B.,	Boston.
GASTON, WILLIAM,	Boston.
GILLIS, JAMES A.,	Salem.
GOODWIN, FRANK,	Boston.
HATHEWAY, SIMON W.,	Boston.
HEMENWAY, ALFRED,	Boston.
HOAR, EBENEZER ROCKWOOD,	Boston.
HOWE, ARCHIBALD M.,	Boston.
HUBBARD, CHARLES EUSTIS,	Boston.
HURD, FRANCIS W.,	Boston.
HYDE, HENRY D.,	Boston.
JONES, LEONARD A.,	Boston.
LADD, NATH. W.,	Boston.
LAMB, S. O.,	Greenfield.

MASSACHUSETTS—Continued.

Lincoln, Charles Sprague,	Boston.
Marshall, Joshua N.,	Lowell.
Marston, George,	New Bedford.
Merwin, Elias,	Boston.
Munroe, William A.,	Boston.
Muzzey, Henry W.,	Boston.
Pierce, Edward L.,	Boston.
Richardson, Daniel S.,	Lowell.
Richardson, George F.,	Lowell.
Russell, William G.,	Boston.
Savage, Thomas,	Boston.
Sears, Philip H.,	Boston.
Shattuck, George O.,	Boston.
Smith, Chauncey,	Boston.
Southard, Charles B.,	Boston.
Spaulding, John,	Boston.
Stetson, Thomas M.,	New Bedford.
Stevens, George,	Lowell.
Storey, Moorfield,	Boston.
Storrow, James J.,	Boston.
Swift, M. G. B.,	Fall River.
Tirrell, Charles Q.,	Natick.
Treadwell, John P.,	Boston.
Wentworth, Alonzo B.,	Boston.

MICHIGAN.

Atkinson, O'Brien J.,	Port Huron.
Ball, Daniel H.,	Marquette.
Cooley, Thomas M.,	Ann Arbor.
Geer, Harrison,	Lapeer.
Henderson, Henry P.,	Mason.
Hughes, D. Darwin,	Grand Rapids.
Weadock, Thomas A. E.,	Bay City.
Wells, William P.,	Detroit.

MINNESOTA.

Hiram F. Stevens,	St. Paul.

MISSISSIPPI.

Harrison, James T.,	Columbus.
Houston, Lock E.,	Aberdeen.
Howry, Charles B.,	Oxford.
Johnston, Toby W.,	Columbus.
Leigh, Joseph E.,	Columbus.

MISSISSIPPI—Continued.

MacFarland, Baxter,	Aberdeen.
Orr, J. A.,	Columbus.
Reynolds, R. O.,	Aberdeen.
Sims, W. H.,	Columbus.
Whitfield, F. E.,	Corinth.

MISSOURI.

Bailey, George W.,	St. Louis.
Bliss, P.,	Columbus.
Broadhead, James O.,	St. Louis.
Collier, M. Dwight,	St. Louis.
Gantt, Thomas T.,	St. Louis.
Hammond, William G.,	St. Louis.
Henderson, J. B.,	St. Louis.
Hitchcock, Henry,	St. Louis.
Hough, Warwick,	Jefferson City.
Kehr, Edward C.,	St. Louis.
Madill, George A.,	St. Louis.
Rankin, John H.,	St. Louis.
Russell, W. H. H.,	St. Louis.
Shippen, Joseph,	St. Louis.
Thompson, Seymour D.,	St. Louis.
Withrow, James E.,	St. Louis.

NEBRASKA.

Laird, James,	Hastings.
Manderson, Charles F.,	Omaha.
Woolworth, J. M.,	Omaha.

NEW HAMPSHIRE.

Bingham, Harry,	Littleton.
Burnham, Henry E.,	Manchester.
Carpenter, Alonzo P.,	Bath.
Chase, William M.,	Concord.
Currier, Frank D.,	E. Canaan.
Fellows, Joseph W.,	Manchester.
Ladd, William S.,	Lancaster.
Marston, Gilman,	Exeter.
Mitchell, John N.,	Concord.
Pike, Austin F.,	Franklin.
Ray, Ossian,	Lancaster.
Shirley, John M.,	Andover.
Stanley, Clinton W.,	Manchester.
Wait, Albert S.,	Newport.
Whipple, Thomas J.,	Laconia.

NEW JERSEY.

ALLEN, ROBERT, Jr.,	Red Bank.
BORCHERLING, CHARLES,	Newark.
DICKINSON, S. MEREDITH,	Trenton.
FLEMMING, JAMES,	Jersey City.
GARRETSON, A. Q.,	Jersey City.
GOBLE, L. SPENCER,	Newark.
HERBERT, JOHN W., JR.,	Jersey City.
KEASBEY, ANTHONY Q.,	Newark.
KINNEY, THOMAS T.,	Newark.
MCCARTER, LUDLOW,	Newark.
MCCARTER, THOMAS N.,	Newark.
PARKER, CORTLANDT,	Newark.
PARKER, R. WAYNE,	Newark.
RANDOLPH, JOSEPH F.,	Jersey City.
RICHEY, AUGUSTUS G.,	Trenton.
SCUDDER, ISAAC W.,	Jersey City.
SHREVE, E. MERCER,	Trenton.
TEESE, FREDERICK H.,	Newark.
VREDENBURGH, JAMES B.,	Jersey City.
VROOM, GARRET D. W.,	Trenton.
WEART, JACOB,	Jersey City.
WEEKS, WILLIAM R.,	Newark.
WHITE, HENRY S.,	Jersey City.
WILLIAMS, WASHINGTON B.,	Jersey City.

NEW YORK.

BAKER, ASHLEY D. L.,	Gloversville.
BEAMAN, CHARLES C., JR.,	New York.
BENEDICT, ROBERT D.,	New York.
BOARDMAN, ANDREW,	New York.
BRISTOW, BENJAMIN H.,	New York.
BULLARD, E. F.,	Saratoga.
BURNETT, HENRY L.,	New York.
BURRILL, JOHN E.,	New York.
BUTLER, BENJAMIN C.,	Lucerne.
BUTLER, WM. ALLEN,	New York.
CLARK, JAMES OLIVER,	New York.
CLARK, THOMAS ALLEN,	New York.
CROWELL, CHARLES E.,	New York.
DAVISON, CHARLES A.,	New York.
DILLON, JOHN F.,	New York
DUDLEY, JAMES M.,	Johnstown.
EATON, SHERBURNE B.,	New York.

NEW YORK—Continued.

EMOTT, JAMES,	New York.
EVARTS, WILLIAM M.,	New York.
FORSTER, GEORGE H.,	New York.
FOX, AUSTEN G.,	New York.
FRENCH, W. B.,	Saratoga.
HALE, MATTHEW,	Albany.
HUTCHINS, WALDO,	New York.
JEWETT, HUGH J.,	New York.
KERNAN, FRANCIS,	Utica.
LEEDS, CHARLES C.,	New York.
MACFARLAND, W. W.,	New York.
MALONE, PHILIP,	New York.
MATHEWS, ALBERT,	New York.
MOAK, N. C.,	Albany.
NASH, STEPHEN P.,	New York.
NELSON, HOMER A.,	Poughkeepsie.
NICOLL DELANCEY,	New York.
PARKER, AMASA J.,	Albany.
PHELPS, WM. WALTER,	New York.
POND, A.,	Saratoga.
PORTER, JOHN K.,	New York.
POTTER, CLARKSON N.,	New York.
PRIME, RALPH E.,	Yonkers.
ROGERS, SHERMAN E.,	Buffalo.
SCHLEY, WILLIAM,	New York.
SCHOONMAKER, AUGUSTUS, JR.,	Kingston.
SCUDDER, HENRY J.,	New York.
SHEPARD, ELLIOTT F.,	New York.
SMITH, HORACE E.,	Albany.
SPRAGUE, E. C.,	Buffalo.
SPIER, GILBERT M., Jr.,	New York.
STERNE, SIMON,	New York.
STICKNEY, ALBERT,	New York.
STOUGHTON, E. W.,	New York.
SULLIVAN, ALGERNON S.,	New York.
TAYLOR, JOHN D.,	New York.
TODD, A. J.,	New York.
VANDERPOEL, A. J.,	New York.
VAN WINKLE, E. S.,	New York.
WARD, JOHN E.,	New York.
WARREN, IRA D.,	New York.
WHEELER, EVERETT P.,	New York.
WILLIS, BENJAMIN A.,	New York.

NORTH CAROLINA.

Boyd, James E.,	Greensboro.
Fuller, Thomas,	Raleigh.
Keogh, Thomas B.,	Greensboro.
Staples, John N.,	Greensboro.

OHIO.

Baker, William,	Toledo.
Baldwin, Charles C.,	Cleveland.
Ball, Flaven,	Cincinnati.
Colston, Edward,	Cincinnati.
Cox, Jacob D.,	Cincinnati.
Craighead, S. C.,	Dayton.
Daugherty, M. A.,	Lancaster.
Davidson, William A.,	Cincinnati.
Ferguson, E. A.,	Cincinnati.
Force, Manning F.,	Cincinnati.
Gottschall, O. M.,	Dayton.
Granger, M. M.,	Zanesville.
Green, Edwin P.,	Akron.
Grinckel, Lewis B.,	Dayton.
Griswold, Seneca O.,	Cleveland.
Harrison, Richard A.,	Columbus.
Haynes, David A.,	Dayton.
Hoadly, George,	Cincinnati.
Hodge, Noah,	Akron.
Houk, George W.,	Dayton.
Hutchins, W. A.,	Portsmouth.
Irvine, James,	Lima.
Johnson, Edgar M.,	Cincinnati.
Jordan, Isaac M.,	Cincinnati.
King, Rufus,	Cincinnati.
Marshall, R. D.,	Dayton.
Mason, James,	Cleveland.
Matthews, Stanley,	Cincinnati.
McClintock, W. T.,	Chillicothe.
McMahon, John A.,	Dayton.
Morris, S. W.,	Ironton.
Munger, Warren,	Dayton.
Noble, Henry C.,	Columbus.
Page, Henry F.,	Circleville.
Porter, W. T.,	Cincinnati.
Ranney, Henry C.,	Cleveland.
Ranney, Rufus P.,	Cleveland.

OHIO—Continued.

SCRIBNER, CHARLES H.,	Toledo.
SHAW, R. K.,	Marietta.
SHOEMAKER, MURRAY C.,	Cincinnati.
TAFT, ALPHONSO,	Cincinnati.
UPSON, WILLIAM H.,	Akron.
YOUNG, EDMUND S.,	Dayton.

PENNSYLVANIA.

ARMSTRONG, WM. H.,	Williamsport.
BALDWIN, HENRY, JR.,	Philadelphia.
BIDDLE, GEORGE W.,	Philadelphia.
BISPHAM, GEORGE T.,	Philadelphia.
BRUNDAGE, A. R.,	Wilkesbarre.
CRAWFORD, GEORGE L.,	Philadelphia.
DARLING, J. VAUGHAN,	Wilkesbarre.
ELLMAKER, NATHANIEL,	Lancaster.
FRANKLIN, THOMAS E.,	Lancaster.
GREEN, HENRY,	Easton.
HAND, ALFRED,	Scranton.
HANDLEY, JOHN,	Scranton.
HAY, MALCOLM,	Pittsburgh.
HEMPHILL, JOSEPH,	West Chester.
HOYT, HENRY M.,	Wilkesbarre.
HUEY, SAMUEL B.,	Philadelphia.
LITTLE, WILLIAM E.,	Tunkhannock.
LUCKENBACH, W. D.,	Allentown.
MACVEAGH, WAYNE,	Philadelphia.
MCCLINTOCK, ANDREW T.,	Wilkesbarre.
MITCHELL, JAMES T.,	Philadelphia.
MONAGHAN, ROBERT E.,	West Chester.
NORTH, HUGH M.,	Columbia
OUTERBRIDGE, ALBERT A.,	Philadelphia.
PALMER, HENRY W.,	Wilkesbarre.
PATTERSON, C. STUART,	Philadelphia.
PENNYPACKER, CHARLES H.,	West Chester.
PERKINS, SAMUEL C.,	Philadelphia.
PETIT, SILAS E.,	Philadelphia.
PORTER, WILLIAM A.,	Philadelphia.
PRICE, J. SERGEANT,	Philadelphia.
RAWLE, FRANCIS,	Philadelphia.
RAWLE, WM. HENRY,	Philadelphia.
REED, HENRY,	Philadelphia.
SEIBERT, W. N.,	New Bloomfield.

PENNSYLVANIA—Continued.

SHARP, ISAAC S.,	Philadelphia.
SHIRAS, GEORGE, JR.,	Pittsburgh.
SHOEMAKER, L. D.,	Wilkesbarre.
SLAYMAKER, AMOS,	Lancaster.
STEWART, W. F. BAY,	York.
STURGIS, E. B.,	Scranton.
VAUX, RICHARD,	Philadelphia.
WADDELL, WILLIAM B.,	West Chester.
WAGNER, SAMUEL,	Philadelphia.
WICKES, PERE L.,	York.
WILLARD, EDWARD N.,	Scranton.
WILTBANK, WILLIAM W.,	Philadelphia.
WOODWARD, STANLEY,	Wilkesbarre.

RHODE ISLAND.

BRADLEY, CHARLES S.,	Providence.
SHEFFIELD, WILLIAM P.,	Newport.
THURSTON, BENJAMIN F.,	Providence.

SOUTH CAROLINA.

BACOT, T. W.,	Charleston.
BARKER, THEODORE G.,	Charleston.
BENET, WILLIAM C.,	Abbeville.
BOYD, ROBERT W.,	Darlington.
CAMPBELL, JAMES B.,	Charleston.
JERVEY, W. ST. JULIEN,	Charleston.
MCGRATH, A. G.,	Charleston.
MCCRADY, EDWARD, JR.,	Charleston.
MCMASTERS, F. W.,	Columbia.
SIMONTON, C. H.,	Charleston.
SMYTHE, AUGUSTINE T.,	Charleston.
YOUNG, HENRY E.,	Charleston.

TENNESSEE.

BAILEY, JAMES E.,	Clarksville.
BATE, H. R.,	Covington.
BROWN, JOHN C.,	Pulaski.
BURTON, JOHN W.,	Murfreesboro.
COOPER, EDMUND,	Shelbyville.
COOPER, WILLIAM F.,	Nashville.
ESTES, BEDFORD M.,	Memphis.

TENNESSEE—Continued.

EWING, EDWIN H.,	Murfreesboro.
FENTRESS, JAMES,	Bolivar.
FLIPPEN, T. J.,	Somerville.
FREEMAN, THOMAS J.,	Trenton.
HARRIS, ISHAM G.,	Memphis.
HOUSE, JOHN F.,	Clarksville.
HOUSE, WILLIAM,	Franklin.
LAMB, J. B.,	Fayetteville.
MARKS, A. S.,	Winchester.
MCNEAL, ALBERT T.,	Bolivar.
MOORMAN, H. C.,	Somerville.
SHIELDS, JAMES T.,	Bean's Station.
STEELE, THOMAS,	Ripley.
WOOD, R. H.,	Bolivar.

TEXAS.

BALLENGER, W. P.,	Galveston.
CRAWFORD, W. S.,	Dallas.
FULTON, MARSHALL,	Denton.
GAINES, R. R.,	Clarksville.
HUTCHINSON, J. C.,	Houston.
STOCKDALE, F. S.,	Cuero.
STREET, R. G.,	Galveston.
WAUL, T. W.,	Galveston.
WEST, C. F.,	Austin.
WILLIE, A. H.,	Galveston.

VERMONT.

DAVENPORT, CHARLES N.,	Brattleboro.
HINCKLEY, LYMAN G.,	Chelsea.
JOHNSON, WILLIAM E.,	Woodstock.
LAWRENCE, L. L.,	Burlington.
NOBLE, GUY C.,	St. Albans.
PAUL, NORMAN,	Woodstock.
PHELPS, EDWARD J.,	Burlington.
POLAND, LUKE P.,	St. Johnsbury.
PROUT, JOHN,	Rutland.
ROBERTS, DANIEL,	Burlington.
SHAW, WILLIAM G.,	Burlington.
SMALLEY, B. B.,	Burlington.
TUPPER, A. P.,	Middleboro.
VEAZEY, WHEELOCK G.,	Rutland.
WALKER, W. H.,	Ludlow.

VIRGINIA.

HAMILTON, ALEXANDER,	Petersburg.
OULD, ROBERT,	Richmond.
PAGE, LEGH R.,	Richmond.
ROBERTSON, WILLIAM J.,	Charlottesville.
TUCKER, J. RANDOLPH,	Lexington.

WEST VIRGINIA.

BOGGESS, CALEB,	Clarksburg.
GOFF, NATHAN, JR.,	
HEREFORD, FRANK,	Union.
HUTCHINSON, JOHN A.,	Parkersburg.
KNIGHT, EDWARD B.,	Charleston.

WISCONSIN.

CARY, ALFRED L.,	Milwaukee.
CARY, JOHN W.,	Milwaukee.
CARY, MILBERT B.,	Milwaukee.
GREGORY, J. C.,	Madison.
HOOKER, DAVID G.,	Milwaukee.
HUDD, THOMAS R.,	Green Bay.
JENKINS, JAMES G.,	Milwaukee.
MARINER, EPHRAIM,	Milwaukee.
PINNEY, SILAS U.,	Madison.
VILAS, WILLIAM F.,	Madison.
WEGG, DAVID S.,	Milwaukee.
WINKLER, FREDERICK C.,	Milwaukee.

OBITUARIES

CONNECTICUT.

CALVIN G. CHILD.*

Calvin Goddard Child was born in Norwich, Connecticut, April 6, 1834. He was a direct descendant of the noted divine, Dr. Joseph Bellamy, grandson of Judge Calvin Goddard, for whom he was named, and son of Hon. Asa Child, United States District Attorney for Connecticut under President Jackson. The family of Childe, from which he sprang, emigrated from England to Roxbury, Massachusetts, in 1630, and subsequently settled in Woodstock, Connecticut. The summers of his boyhood were often spent in North Woodstock on the farm of his grandfather, Rensselaer Child, with great benefit to his then delicate constitution. He prepared for college at the University Grammar School in the city of New York. From that city he entered the Freshman class in Yale College, and was graduated in 1855 with a fair record as scholar and writer. After his graduation at the Harvard Law School in 1853, he practised law in Norwich, Connecticut, until 1864, when he formed a law partnership with Thomas E. Stuart, Esq., in the city of New York, where he continued business until 1867, meanwhile residing at Southport, Connecticut. In 1867 he removed to Stamford, Connecticut, and entered into partnership with Joshua B. Ferris, Esq., a prominent member of the Fairfield county bar. Samuel Fessenden, Esq., was also a member of the firm

*Reprinted substantially from 47 Connecticut Reports.

from 1870 to 1873, when it was dissolved. In May, 1862, Mr. Child was appointed Executive Secretary of Governor Buckingham, and in the August following aide-de-camp on his staff. His active and untiring services during those troublous times, when all the energies of the state and its officials were taxed to the utmost, won the confidence and warm regard of the great war governor. In 1870 he was appointed United States District Attorney for Connecticut, which office he held up to the time of his death. After his removal to Stamford he was much employed as counsel for the New York and New Haven Railroad Company, and his private practice was extensive and constantly increasing. The secret of his success was an open one. He was careful in the preparation of his cases, and skilful and eloquent in their presentation. "An easy and graceful speaker, his rhetoric was cultivated by extensive and careful reading, and enlivened by a ready flow of humor." He was thoroughly versed in the branches of law on which he was most engaged—corporation cases and suits for the United States Government. For criminal practice generally he had but little taste. He had no fondness for unduly straining doubtful bits of testimony against the accused. His extreme sensitiveness made him, at times, in doubtful cases seem to lack grip and force; but when the nature of the case aroused him and justice was in danger of defeat, he exerted himself with vigor and effect. While an officer of the government he kept the record books, reports, and accounts, and all the minor details of the office, with scrupulous accuracy. He showed a remarkable aptitude in dealing with the many cases arising under the internal revenue laws—cases which usually and naturally excite friction and irritation. The attorney had a happy way of doing the disagreeable part of the business so as to give the least possible offence. In all his official relations he upheld the honor and dignity of the government, and while demanding for it all of its rights he used none of its powers to oppress or annoy. His word was sacred, and every one with whom he dealt recognized in him a courteous and upright representative of the United States. His whole

career at the bar was characterized, as his brethren have put upon record, "by conscientious devotion to his clients, courtesy to his brethren, fidelity to the court, and honor to himself." He was no fomenter of litigation. He had the distinctive characteristic—the sure mark of the honest lawyer, often so little considered by the lay world, but the crowning test with the members of his profession—he always insisted on a careful and critical examination of a client's case before suit, and if he had no case that should be litigated he told him so. His conspicuously fair and gentlemanly conduct of a case in court made the trial a pleasure alike to colleague and opponent. He promoted in various ways the elevation of professional standards, and the growth of associations, state and national, calculated to foster a high sense of professional honor. "As a citizen," says a townsman, "he was foremost in every good word and work, and held in high esteem throughout the entire community." His character, as a whole, was rounded by many qualities rarely united in the same person. Gentle in manner, inflexible in principle; intensely earnest, yet courteous to everybody; just, but always generous to a fault; scholarly and patrician in his tastes, while social in all his instincts; reverent, reserved, refined, while greatly given to hospitality and winning in his address; with no lack of dignity he had a certain perennial youthfulness of temperament and appearance that was in itself an inspiration. He was that brave, cheerful, elastic spirit, which, like the rare book of which the poet sings,

"Always finds us young,
And always keeps us so."

He bore the physical disabilities of his later years, not only with serenity and fortitude, but with a boyish enthusiasm. His unfailing humor had the honey of wit without its sting. It was the honey of the honey-comb, as graceful in form as it was grateful in flavor. A faithful officer, a good counsellor, an accomplished advocate, it is not in these relations that his loss is most deeply felt. That gracious blending of nobleness and gentleness, manliness and tenderness, practical force and poetic

fancy, an integrity almost austere, sweetened by the heartiest of good-fellowship, made him the most charming of companions, and his home and home life a delight to his guests, a benefaction to his neighbors. Everybody who knew him was his friend, and the rare thing about it was, that as the circle widened the stronger grew the attachment. His sympathy was inexhaustible. Never a sad heart came to him that did not go away comforted; never a suffering body that he was not ready to aid to the utmost of his ability.

In March, 1880, he was stricken with apoplexy, and after another attack at Saratoga in the following August, he failed steadily until his death, which occurred on September 28, 1880 He married, in 1858, Miss Kate Godfrey, of Southport, who with a family of four children, survives him. His loving interest in his friends, far and near, lasted as long as his mental consciousness, and when his memory had failed him on all other subjects. To many of those friends thinking over his bright career, before almost unclouded, and so suddenly eclipsed at mid-day, may recur (as it has to one of them) the noble threnody of his favorite author, commemorative of another gentle and not more royal soul—

> "Who reverenced his conscience as his king, * *
> Wearing the white flower of a blameless life."

Mr. Child prepared the first paper read before the Association—at its Second Annual Meeting; it is printed in the report of that meeting, and is replete with wise professional counsel and with a delicacy of humor that will long be remembered by those of the Association who were fortunate enough to hear it. The closing quotation of the paper may well be applied to him:

> "So mergeth the true hearted,
> With aim fixt high,
> From place obscure and lowly,
> Veereth he naughte,
> His worke he wroughte.
> How many loyal paths be trod,
> So many royal crowns hath God!"

LAFAYETTE SABINE FOSTER.*

LaFayette S. Foster, for twelve years a Senator in Congress from this state, and for several years afterwards a judge of the Supreme Court of the state, died at his residence in Norwich, on the 19th day of September, 1880. He had been ill but a few days and no notice of the fact had been given to the public, so that it was with the shock of a great and most painful surprise that the community heard of his death. Though he had attained his seventy-fourth year, yet he was so full of both mental and physical vigor that no one thought of his dying for many years. Few men of sixty are in better condition for effective and valuable service than he then was. He had also been so long a marked figure in professional and public life that he had come to seem like an abiding one.

Judge Foster was a rare man. Of remarkably fine personal appearance, with elegant manners, and cultivated tastes, yet genuinely cordial and kindly feeling, he made himself exceedingly agreeable to those who knew him intimately. He was no seeker after popularity, certainly he never descended to any truckling arts to secure it, and probably to some extent he lost favor by the high tone of both his character and bearing, and by the selectness of his friendships. He was a man of the most absolute integrity. In social life he was one of the most delightful of companions. At the dinner table, especially in dispensing the elegant hospitalities of his own house, he was rarely equalled as a brilliant contributor to the table-talk, which he never monopolized. With a keen sense of humor and great facility of expression, he was always ready with brilliant retort or apposite and well-told anecdote, and always had at hand most pertinent citations from the stores of literature, especially the old English classics, both poetry and prose, which he could repeat, often at great length, from memory. To his duties upon the bench he brought a vigorous and well-trained understand-

* Reprinted from 47 Connecticut Reports.

ing, clearness and acuteness of intellect, a good knowledge of law, an abhorrence of legal chicanery, and a strong sense of justice. He found, however, a more congenial employment in the political discussions and duties of his senatorial career, and it is mainly as a prominent figure in congressional life, as a clear and forcible debater upon great public questions, and as an unsurpassed presiding officer in the Senate, that he was most widely known and will be best remembered.

Appropriate resolutions expressive of the affectionate respect and admiration in which he was held by his professional associates were passed at a largely attended meeting of the New London County bar on the occasion of his death; and on their presentation to the Superior Court by a committee of the bar, the Hon. John T. Wait, after requesting that they be entered on its records, gave the following admirable sketch of his life and character in an address to the court.

ADDRESS OF MR. WAIT.

Death has again invaded the ranks of our profession and taken from us one of our number, who for many years has not only been the acknowledged head of the bar in this county, but occupied a conspicuous position among the leading practitioners at the bar of this state.

The Hon. LaFayette S. Foster, our associate and our friend, has been suddenly struck down by a fatal disease, full of years indeed and crowned with honors, but still in the midst of his usefulness, with his physical powers unshaken and his intellect unclouded. In this county, in which he was born and passed his entire life, except when temporarily absent in the discharge of public duties, where his character was best understood and his great abilities and many virtues most highly appreciated, his loss as a public man, a personal friend, and a professional brother is painfully felt and deeply lamented.

Mr. Foster was born in the town of Franklin, in this county, on the 24th of November, 1806. He was a direct descendant from Miles Standish, the eminent Puritan leader, and also a

lineal descendant of Doctor John Sabin, a citizen of this state, who was prominent in the list of its early settlers. His father was Captain Daniel Foster, also a native of Franklin, who distinguished himself in several of the battles of the Revolution for his gallantry and efficiency as a military commander. His mother was Wealthea Ladd, also a native of Franklin, a lady possessed of more than ordinary intellectual gifts and remarkable energy, and who was connected by blood with many of the leading colonists in this section of our state. His early education was such as could be obtained in the common schools of his native town, and he entered Brown University in February, 1825, and graduated from that institution in September, 1828, with the first honors of his class.

When I first became acquainted with Mr. Foster he was a student in the office of the Hon. Calvin Goddard in Norwich. * * * * I allude to my personal relations with the deceased to show the excellent opportunities that I enjoyed to thoroughly know him, and which now enable me to bear pleasant testimony to his nice sense of honor, his unsullied private character, his rare intellectual endowments, and and his many and varied accomplishments.

Ardent and aspiring, he had decided at an early age to pursue the profession of law. Animated by an honorable ambition, determined to succeed in this controlling purpose, confident in his own ability to overcome all ordinary obstacles, from means principally obtained by teaching, supplemented by such pecuniary aid as a devoted mother could render, Mr. Foster qualified himself to enter and sustained himself through college and acquired his profession. At the November term of the County Court, 1831, he was admitted to the bar of this county, and at once commenced to practice in the courts. The early friends of Mr. Foster will recollect that he attracted attention at that time as a young man of unusual promise, and his future prominence as a jurist and advocate was then anticipated. At the time that he commenced practice the bar of this county presented an array of gifted men, who had already won distinction.

Goddard, Strong, Child, and Rockwell at Norwich, Law, Isham, Brainard, Perkins, and the younger Cleveland at New London, and McCurdy at Lyme, were the recognized leaders, and were formidable competitors of the young aspirant for professional honors. But though the task was arduous and the struggle severe, it was not many years before Mr. Foster succeeded in winning a high reputation as a lawyer. He had been a close student, not only when preparing for admission to the bar, but also in the early years after he was admitted, when he had leisure to familiarize himself with the principles of the common law, the statutes of our state and the practice of the courts; so that when he was subsequently called to the trial of important causes he realized the fruits of this course of study, and was prepared to contend successfully with men who enjoyed the advantages of a larger experience and longer established reputations. Mr. Foster's exertions to take a high rank in his profession and obtain a lucrative practice were soon crowned with success. His retainers rapidly increased, his engagements multiplied, litigants that appreciated his great ability eagerly sought his services, and not only his rise at the bar of this county but at that of the state was marked and rapid. He was soon enrolled in the highest rank of counsellors and advocates. Even when in the full enjoyment of public honors, he clung to his profession. On his retirement from the Senate he returned to that pursuit to which he had devoted his early life, and of late years has been often engaged in the trial of important causes. In the argument of cases Mr. Foster's manner was easy and impressive, his voice was clear and well modulated, he had a wonderful command of language, an adroitness in grouping the telling facts developed by the testimony and a forcible mode of presenting the same that had a potent effect on the court or the jury. All through his long and brilliant professional career he so conducted as to win the respect of his associates at the bar, and to lead the public to place unlimited confidence in his professional honor and integrity.

The bench and bar of this state will profoundly feel the great loss that they have met with by the death of Mr. Foster. By his brethren in this county will it be the most deeply appreciated, for they have ever found him in his daily walk a pleasant associate, in forensic struggles an honorable opponent, and, when connected with him in the transaction of business and relying upon his advice and assistance, an able, faithful, and efficient adviser and friend. In his own professional conduct he has ever presented a high standard of honor, integrity, and courtesy, and sought in every way to impart propriety and dignity to the practice of law. May we all ever hold in memory the noble qualities of the great man that has left us, and resolve to pattern after his admirable example.

It was not as a lawyer of rare ability only that Mr. Foster at an early age became favorably known to the public and won merited distinction. While engaged in the study of the law he took a deep interest in public affairs, and immediately after entering his profession connected himself with the National Republican, and subsequently with the Whig and present Republican parties. He loved his profession, but at the same time he had a laudable ambition to take a prominent part in the exciting and arduous duties of public life. His political friends in Norwich felt, if he would consent to enter the General Assembly of the state, that they would have in him a faithful and efficient representative, and his party an able and reliable champion. He was many times elected a member of that body—from 1839 to 1854—and was three times chosen Speaker of the House. He entered that service in the freshness of his youth, and he was called from it to a higher and broader field of public duty in the maturity of his manhood. He had remarkable gifts for a successful performance of the duties of the speakership. He was quick, self-possessed, firm of purpose, had an iron control over his temper, and thoroughly understood those parliamentary rules that clothed him with authority and commanded the obedience of the House. Each time that he retired from

the Speaker's chair the members of the House, without distinction of party, bore ample testimony to the ability, courtesy, and impartiality that he displayed as its presiding officer.

In 1855 Mr. Foster entered the Senate of the United States and remained a member of that body twelve years. He was elected its President *pro tempore* in 1865, and held the position until his retirement from the Senate in 1867. After the assassination of Mr. Lincoln and the advancement of Mr. Johnson to the presidency, he became the acting Vice-President of the United States, and held that high office while he remained a member of the Senate. As the presiding officer of the Senate he maintained the same reputation for great ability that he had earned as Speaker of the Connecticut House of Representatives; and by blandness of language, firmness of purpose, and personal dignity, commanded the respect and won the esteem of the members of that body.

While Mr. Foster was connected with the Senate it numbered among its members some of the most illustrious statesmen that this republic has ever produced. Fessenden of Maine, Foote and Collamer of Vermont, Anthony of Rhode Island, Seward of New York, Trumbull and Douglass of Illinois, Sumner and Wilson of Massachusetts, Sherman and Wade of Ohio, Grimes of Iowa, Breckenridge and Davis of Kentucky, Saulsbury of Delaware, McDougall of California, Hunter of Virginia, Benjamin of Louisiana, and Frelinghuysen of New Jersey, were among his intimate senatorial associates.

As a scholar, a lawyer, and a statesman, Mr. Foster ranked among the most distinguished members of the Senate, and the record that he made, during the twelve years that he was a member of that body, is one of which the state that honored him by placing him there may well be proud. When he first took his seat in the Senate the slavery question, which had long and violently agitated the country, had nearly reached its culmination. Mr. Foster united with his associate senators from the northern states in resisting the arrogant demands of the slave power, and by voice and vote sustained the doctrine of human freedom and the equality of all men before the law.

In the great struggle to save the life of the nation and to preserve our free institutions for posterity, from the day when the first southern state attempted to secede from the Union till the final surrender of the rebel leaders at Appomattox, he took no hesitating nor uncertain part. All his declarations and acts, in the national council or at home, were such as loyalty inspired and love of country demanded.

In 1870 the town of Norwich again sent Mr. Foster to the legislature of the state; he was once more chosen Speaker; and, before the close of the session, he was elected a Judge of the Supreme Court, a position which he filled until 1876, when, having reached seventy years of age, he was disqualified by a provision of the constitution. As a member of the court Mr. Foster so conducted as to win favorable opinions from lawyers and litigants. His courteous manner to counsel, the patient attention which he exhibited in the trial of causes, his dignified demeanor on the bench, and the strict impartiality and unbending integrity that governed him in his decisions, led the people of the state to hold him in high estimation. His opinions, which he gave as a judge of the court of last resort, and are contained in the recently published volumes of our state reports, disclose extensive research, great legal acquirements, and a clear, active, and well-balanced intellect.

Other honors were at different times bestowed upon Mr. Foster. He was twice elected Mayor of the city of Norwich, twice he was the candidate of his party for the office of Governor of the state, and in 1851 his Alma Mater conferred upon him the honorary degree of Doctor of Laws, a distinction eminently due to his well-known attainments as a scholar as well as a jurist.

The friends of Mr. Foster who knew him intimately can bear testimony to the versatility of his genius, his untiring industry in the pursuit of knowledge of every kind, and his familiarity with ancient and modern history, and English and American literature. His mind was a storehouse of interesting and valuable information; and his fertile imagination, great command of language, and easy utterance, made him a most interesting and instructive companion.

ORIGEN S. SEYMOUR.

Origen S. Seymour was born in Litchfield, February 9, 1804, and graduated from Yale College in the class of 1824. He was a member of the general assembly in 1842 and 1843; also in 1849 and 1850. The latter year he was elected speaker of the house, and discharged his duties with signal ability and urbanity. In 1851 he was elected a member of Congress from the fourth district, and was returned two years later, serving four years in all in the Federal House of Representatives. He became a judge of the superior court in 1855, and continued in office until 1863. Judge Seymour was then nominated for governor by his party, but the party suffered defeat. In 1870 he was re-elected to the bench of the Supreme Court, and made Chief-Justice. Having reached the constitutional limit of seventy years, he retired in 1874, and soon after was given a complimentary banquet at the Sterling House in this city by the Fairfield County Bar, which was an occasion of great interest to all who were present, and fully showed the filial regard and reverence in which the venerable Chief-Justice was held by all the lawyers of the state.

Since the close of his career on the bench, which was one of untarnished honor, he has practised his profession at the bar. Judge Seymour has served on various state commissions: notably as chairman of the commission that investigated the affairs of the Charter Oak Life Insurance Company; on the commission on revising the civil practice in the state courts, and the commission for settling the boundaries between New York and Connecticut. Judge Seymour was a Democrat of the old Jeffersonian school, and a firm believer in the reserved rights of the people. As a lawyer he had few equals in the state and no superiors; as a citizen he was public-spirited and devoted to the welfare of his native town and state, and as a man, no one ever made his acquaintance who did not respect and admire him. He had been identified for many years with

the Protestant Episcopal Church, and had often been an active and influential lay delegate to its diocesan and general conventions. His wife and three sons survive him. In 1880 he was elected with great unanimity by his native town again to represent it in the legislature (his son, Morris, at the same time being the senator from this district), and while in Hartford attending to his duties was stricken with what was for a time feared would prove to be a fatal illness, but, having reached home, faithful medical attendance and nursing restored health and strength temporarily. He died on August 12, 1881, at Litchfield. He served for three years as Vice-President of the Association for Connecticut, and filled that position at the time of his death.

ILLINOIS.

ORVILLE H. BROWNING.

Mr. Browning was a native of Kentucky, and moved to the state of Illinois in the earliest period of her history, about the year 1830. He located at Quincy, in that state, and commenced the practice of law, where he still resided at the time of his death. For over a period of half a century he illustrated the professional annals of his state by the highest achievements of a rare culture, varied learning, and great forensic ability.

He was contemporary with Abraham Lincoln and Stephen A. Douglass; and it was among the highest of his claims as a citizen that the people of his own state recognized him as the equal in rank of those great leaders of the bar and the senate.

From a private career in his profession he rose to the highest public dignities. He was selected to represent his state in the United States Senate. He became a member of President Johnson's Cabinet. And in all places, whether of public or

private trust, he has been accredited with maintaining the strictest integrity and the highest motives of patriotism and honor.

His own state has paid to his memory the highest tributes of affection, and recognized the value of his life in the instruction which his career has afforded as an example.

MARYLAND.

THALES A. LINTHICUM.

Thales A. Linthicum was born 31st October, 1832, in Anne Arundel County; his father being a well-known farmer of that county, who had several times represented the county in the legislature, and his mother being a sister of Charles R. Stewart, a prominent citizen of Howard County. He was removed, on the early death of both parents, to Baltimore, being then about eleven years of age, and was brought up in the family of the late Rev. E. Yeates Reese, D.D., of the Methodist Protestant Church, who had married his sister. He was educated in Baltimore, under the direction of his brother-in-law; but in his sixteenth year entered the house of Schaefer & Loney, who were large hardware merchants of the city, and remained with them until his twenty-second year, having during that time risen steadily in the confidence of his employers, so that, when scarcely eighteen years of age, he was sent by them to travel for the house through the South. He gained, during his employment in mercantile pursuits, an extensive knowledge of business, which was of great service to him subsequently, and acquired, as he deserved, a high reputation in the community for solid judgment and knowledge of affairs. In his twenty-third year he determined to apply himself to the law, and, greatly to the regret of his employers, left them, and entered on the study of the law with the late

Thomas S. Alexander, of Baltimore. Beginning his studies with a matured intellect, he quickly mastered the principles of the science, and laid the foundation of the accurate knowledge of the law for which he was afterwards distinguished. Upon his admission to the Bar in 1857 he at once acquired a lucrative practice, which he retained till his death, having been favored, besides his possession of excellent natural abilities and the quality of making friends, by those effects of his environment upon a man, which, for want of a better name, we call good-luck. Mr. Linthicum was very well versed in real estate law, and perhaps preferred the conveyancing part of business; but he was an excellent *nisi prius* lawyer, and a sound and judicious advocate. He was an exceedingly popular man amongst his associates at the bar, and his friends, of whom he had many, from his unvarying kindness of heart and good humor, and his engaging social qualities and tact. He never had an enemy, and was the trusted friend and adviser of the younger portion of the profession. The confidence of his clients in his sound judgment and skill as a lawyer was unbounded, and on many occasions he was selected as arbitrator, not only by his brethren of the bar but by lay people, and gave universal satisfaction by his decisions. His integrity was never questioned, and he bore a name above reproach.

Mr. Linthicum married, in 1860, Miss Emma S. Alexander, a daughter of his preceptor, by whom he left a family. His death occurred on the 28th June, 1880.

APPENDIX.

ADDRESS

OF

EDWARD J. PHELPS,

PRESIDENT OF THE ASSOCIATION.

GENTLEMEN OF THE ASSOCIATION:—Your Constitution, which requires of your president to "communicate the noteworthy changes in statute law" since our last meeting, has imposed upon me a dry subject, and one I have not found easy to deal with. Only five states (Maryland, Virginia, Louisiana, Iowa, and Kentucky) have been so fortunate as to have escaped a meeting of their legislature during the past year. One other (California) has been happily relieved from the usual consequences of such a session, by its law-makers becoming so deeply involved in controversy among themselves as to be unable to agree upon any other legislation. The modern invention of the "dead-lock" is not without its advantages.

From each of the other states comes an octavo volume of fresh enactments, on an infinite variety of subjects. To digest all this incongruous material, to classify and present it here within any reasonable limits, so as to render the result even intelligible, not to say interesting, is difficult. But for the felicitous manner in which it has been accomplished by my distinguished predecessors in office, I should have thought it impossible. I am compelled to pass over most of it hastily, and to dismiss with mere mention many topics, which if time allowed, would invite more careful statement, and more extended comment.

I should add also, in explanation of inaccuracies that may be hereafter apparent, that while by the courtesy of members I have been furnished with all available information, the sessions of various legislatures have been protracted to so recent a period, that from two states (New Hampshire and Indiana) I have been unable to obtain any report, and from several others only abstracts and titles of their session laws, at a late period.

In Federal legislation but two acts of special interest are to be noticed.

The first grants lands to the territories of Dakota, Montana, Arizona, Idaho, and Wyoming, for the founding of future universities. It is not for us, nor for our generation, to anticipate the advantages that will be derived by this forethought, to the great states that will some day surround the solitudes thus appropriated.

The other act referred to, provides for the registration and protection of trade-marks. It was enacted in consequence of the former law on the subject being held unconstitutional.

This statute limits the right of registration under it, to those trade-marks used in commerce with foreign nations which afford similar privileges to citizens of the United States, leaving other trade-marks to the protection of the general rules of law, or to state enactments.

Turning over the mass of state legislation, while some of it is useless, some of it ill-advised, if not positively pernicious, and some of it probably invalid, there is still a considerable portion that is undoubtedly beneficial, and that shows in some directions a real advance. It is pleasant to advert first to that which is most salutary.

Various statutes have been passed for the better protection of human life. Illinois, Arkansas, Delaware, and South Carolina have prohibited the carrying of concealed deadly weapons on the person, and Pennsylvania the sale of them and of gunpowder to minors. In Nebraska cities are authorized to pre-

vent the carrying of concealed weapons; a provision of questionable validity.

In Arkansas, West Virginia, Missouri, and Kentucky, acts regulating the sale of poisons, and requiring them to be conspicuously marked, have been adopted.

Laws restricting the business of the dealing out of medicines to those licensed for that purpose, upon suitable qualifications, have been enacted in Illinois, West Virginia, Missouri, Connecticut, and Wisconsin.

Provisions regulating the storage of inflammable oils have been adopted in Wisconsin and Arkansas.

In Connecticut and Maine, fire escapes have been required to be attached to manufactories. And in Missouri, Ohio, and Tennessee statutes for the protection of miners against explosions have been passed.

In Ohio and Michigan, provision has been made for inspection of buildings, and in the latter state, of coal oils, with a view to their safety.

In Vermont, a protection against danger from the bursting of water reservoirs has been devised, under which application to judicial authority for a survey of such structures, and repair if found necessary, may be made by inhabitants of the vicinity, when danger is apprehended.

Various provisions affecting the safety of passenger transportation on railways have been adopted.

In Vermont, requiring brakes on all passenger trains that can be operated from the engine; prescribing the size of bridges, and the management of trains at crossings.

In Massachusetts, prohibiting the employment of color-blind persons in any position requiring power to distinguish color signals, and providing for the examination of those so employed. And giving an action to the representatives, in case of death resulting from negligence of a railway company.

In Rhode Island, prohibiting the lighting of cars with certain inflammable oils.

In Missouri, forbidding the transportation of nitro-glycerine, and in Michigan that of inflammable oils, on any train used for the conveyance of passengers.

In Michigan, requiring all such trains to be provided with axes, saws, and lifting jacks, and making provision for the protection of the lives of employees.

In Vermont, forbidding the leaving of hand cars, and other objects calculated to frighten horses, in the highway near railroad crossings.

In Tennessee, a supervision of roads and rolling stock in matters affecting the safety of passengers has been given to the railroad commissioners.

The advance in the direction of adequate laws against murder has not been great.

South Carolina has passed an act against duelling, and has also provided that where a person dies in one county in consequence of a homicidal injury received in another, prosecution may be instituted in either.

In Texas, the form of all indictments has been greatly simplified.

Vermont has adopted a provision obviating the necessity of describing in an indictment for murder the precise means by which it was committed.

And in Mississippi, a change of venue in criminal cases is authorized on motion of the state.

In Texas, it is enacted that intoxication or insanity from excessive use of ardent spirits shall not be a defence in indictments for crime, but may be given in evidence to reduce the degree of murder.

On the other hand, the facilities for the escape of assassins have been further enlarged in Michigan, Mississippi, West Virginia, and New Jersey, by making them witnesses in their own behalf; and in the latter state, by allowing wives to testify in criminal cases in defence of their husbands. All experience proves that criminals will perjure themselves to avoid convic-

tion, and that women of a certain class will habitually swear falsely to protect their husbands; and the influence over the average jury of an attractive or adroit woman is proverbial, especially in causes where sympathy can be excited.

The authors of such provisions lose sight of the salutary principle of the common law, that requires the sources of evidence laid before a jury to be free from suspicion, so that the testimony shall be at least more likely to be true than false.

There is no subject within the domain of legislation, in my judgment, in which improvement is so needed as in the law against murder. The practical immunity that crime enjoys in some sections of the country, and the delay, difficulty, and uncertainty in enforcing the law almost everywhere, is a reproach to our civilization. Efforts to save assassins from punishment are so strenuous, the chances of escape so numerous, and the proceedings so protracted, that the law has few terrors for those disposed to violate it.

It is time to be rid of the mischievous idea, that in proportion to the heinousness of crime the chance of escape from the consequences should be increased. The proposition should be reversed. That all reasonable safeguards should surround even possible innocence, lawyers will be foremost to maintain. But we need a system of criminal justice that shall secure the prompt and certain punishment of those who can be legally proved guilty of murder, and a curtailment of that complicated machinery which affords no additional protection to the innocent, and is a constant means of escape for the guilty.

Various regulations for the protection of public health have been adopted in different states. The most prominent and the most useful are those regulating the practice of medicine and surgery, adopted in the states of Pennsylvania, Arkansas, West Virginia, Nebraska, Florida, Connecticut, Ohio, and Wisconsin. They restrict the practice to those, who upon evidence of suitable qualifications, are licensed by a board of competent examiners, or are graduates of regular medical schools. Such was

previously the law in a few other states. It is to be hoped that the day is not far off, when every state will prohibit the destruction of life and health by the practice of quackery.

In Ohio, penalties against fraudulent medical diplomas have been enacted.

Laws requiring examination and license for the practice of dentistry have been adopted in Missouri and West Virginia.

In Pennsylvania, Arkansas, Michigan, and West Virginia, provision has been made for state boards of health, with jurisdiction to deal with all matters affecting the origin and spread of disease.

In New York, a public night medical service for the city of Brooklyn has been provided.

Rhode Island has prohibited the attendance of pupils in the public schools who have not been vaccinated.

Wisconsin has passed an act to prevent the spread of infectious diseases. It prohibits the transportation into any town of the body of a deceased person, unless accompanied by the certificate of a physician stating the cause of death; and where the disease is contagious, a permit of the board of health, and a sworn declaration that the body is enclosed in an air-tight coffin, or encased with disinfectants. It further makes liable to a penalty, any person who knowingly laboring under any contagious disease shall wilfully enter, or who shall cause a child so affected to enter, a public place or conveyance, or subject others to the danger of contracting his disease, or shall wilfully subject others to the danger of contracting disease from a dead body.

Many states have adopted laws against the adulteration of food, drinks, or medicines, general, or referring to particular articles. And in New York active measures have been taken to enforce the law.

The fraudulent sale of oleomargarine for butter, in several of these states is the subject of special prohibitions and penalties; though in Pennsylvania and New York bills for that purpose were vetoed by the governor.

New York has enacted a statute so humane that it ought not to have been necessary, requiring the proprietors of stores to provide seats for the use of their shopwomen.

Maine has made a small advance, though better than nothing, in the matter of enabling physicians to procure necessary subjects for dissection without violating the law. It provides that the body of any person who so consents during his life, may be delivered to a physician for the advancement of anatomical science after his death, unless some kindred makes objection. And that the body of any person which shall not be claimed by his family for burial, reasonable notice being given for that purpose, shall be subject to the use of the medical school of Maine. A subsequent act, however, requires that all such bodies shall be embalmed and preserved without dissection for thirty days.

Ohio and Michigan have passed more effectual laws, under which the bodies of all persons dying in any institution supported in whole or in part at the public expense, or who must be buried at the public expense, shall be delivered for dissection, unless claimed by kindred: in Ohio on the application of a professor of anatomy in any college in the state empowered to teach anatomy, and in Michigan, to the same officer in the state university.

In behalf of public morals various efforts, more or less efficient, have been made.

Laws against gambling, pool selling, lotteries, etc., have been enacted in West Virginia, Missouri, Colorado, Rhode Island, and Ohio.

Acts for the suppression of obscene literature have been passed in Missouri. And a law in Michigan prohibiting its sale to minors, but leaving it free to be distributed among those supposed to be old enough to profit by it. Doubtless these laws will be regarded as unconstitutional, by the excellent society which exerts itself in behalf of the diffusion of obscenity; but it is fair to expect that courts of justice will continue to differ with these philanthropists, on this question as on many others.

Rhode Island has also done something in the same general direction, by an act forbidding the use of their state house except for legislative purposes; thus suppressing in that state the travelling orators who are accustomed to ventilate their theories in legislative halls.

In Massachusetts, an act authorizes the courts, in their discretion, to exclude minors from court rooms.

The laws relative to the trade in intoxicating liquors have occupied a large and increasing share of the attention of legislatures. Statutes on this subject have been passed in Arkansas, Alabama, Nebraska, South Carolina, Rhode Island, Connecticut, Wisconsin, North Carolina, Kansas, and Vermont. Time forbids a comparison of their merits, or even a statement of their details, which vary very materially. Some are violent, others moderate and salutary.

The law in Alabama applies to the whole state, "except Blount's Springs." Why this sanctuary for the thirsty against the vengeance of the law was created, is not stated. Perhaps it is not far from the capital.

In Michigan and Nebraska, the traffic is legalized under rigid restrictions, to any one who executes a satisfactory bond to observe the requirements of the law. This disposition of the subject is, so far as I know, novel, but is not without argument in its favor. In Nebraska a license fee of $1,000 is also required.

In Wisconsin and Nebraska, statutes have been passed against "treating" at bars and saloons. In Wisconsin, the act has been held unconstitutional by the supreme court, perhaps as being in contravention of inalienable rights.

That the liquor traffic needs to be regulated by law, is not to be doubted. The evils arising from intemperance are unhappily too well known. That barkeepers, as such, have but few rights that are entitled to respect, will not probably be denied. But how far, after all, intemperate legislation will succeed in the suppression of intemperate drinking, is a question that still remains to be answered. That extreme laws on

the subject, however fruitful in litigation, ill-blood, and expense, do materially diminish the consumption of liquor, has not yet been proved. The precedent they generally establish, of a penal law, only spasmodically and occasionally enforced, and the habitual violation of which is justified by a considerable portion of the community, may well be deprecated. The use of stimulants has been almost universal in the history of the world, and is not likely to be terminated by legislation. Milder means may probably be found as effectual in the suppression of intemperance, as of other vices.

The subject of what is commonly called "woman's rights" has not failed to receive even more than its usual attention.

In Nebraska, a constitutional amendment extending to women the full right of suffrage has been submitted by the legislature to the people, but has not yet been voted on.

In Vermont, women have been made eligible to school offices, and entitled to vote in school elections, and are empowered to assign life insurances effected in their favor by their husbands. And a married woman carrying on business in her own name, is made capable of suing and being sued in the same manner as if unmarried; executions to be levied on her separate property.

In Wisconsin, a married woman is authorized to sue in her own name for personal injuries received, and to have and control the damages recovered, as her separate property.

In Rhode Island, her right of choice has been enlarged by the repeal of the restriction against intermarriage with negroes.

In Missouri, the wife is authorized to file her claim to the land occupied by her husband as a homestead—not exceeding $1,500 in value—after which the husband is debarred from disposing of it in any way whatever, any sale or mortgage being declared void *in toto*, unless concurred in by the wife.

In Connecticut, it has been enacted that a husband neglecting to support his wife shall be sent to the workhouse.

In Colorado, failure by the husband to provide for the wife for the period of one year entitles her to a divorce.

In New Jersey and Mississippi, she is made a witness in her own behalf in proceedings for divorce.

By a recent act in Mississippi, married women are relieved from all the disabilities of matrimony, and are placed on the same footing in all respects as if unmarried, so far as concerns property, contracts, business, and the right to sue and be sued. The woman is made entirely independent of her husband, may contract with him, sue him, and be sued by him, and may testify against him in her own behalf. They cannot, however, sue each other for services rendered, which seems to be the only exception that mars the symmetry of the act.

While something has been done to increase, nothing has been done, so far as I have observed, to diminish the facilities or the causes for divorce, or to indicate what proceeding, under American law, shall be sufficient to constitute a marriage. Though in Missouri and Rhode Island, marriage licenses have been made requisite, under a penalty, not against the party, but against the officiating clergyman or magistrate.

In Michigan, it has been enacted that an illegitimate child may be legitimated, not only by the subsequent marriage of his parents, but also by a writing executed by the father and recorded; thus putting it in his power to place his illegitimate children on the same footing with those born to him in wedlock.

In Missouri, a feeble blow has been struck in behalf of the long-neglected rights of man, by a statute which exempts the husband from liability for the debts of the wife, contracted before marriage.

Modern agitation and modern legislation on this subject, appear to proceed upon the theory that the husband is the antagonist against whom the wife chiefly needs protection. They tend to deprive marriage of its old-fashioned sacredness, its community of interest, its indissoluble obligation. Among a certain class it is becoming a condition of "armed neutrality," of which the mottoes are, "In time of peace prepare for war." "Millions for defence, not one cent for tribute." A sort of qualified partnership, contracted without solemnity, dis-

solved without cause, barren of its natural offspring, and fruitful only in quarrel and dispute. Appeals from the decrees of the Almighty are rarely successful. The most enterprising lawyer might hesitate to advise them. It may probably turn out, after due experience, that the welfare of woman is not promoted, nor her character elevated, by efforts to transpose her sex; nor by substituting between her and her husband the protection of ill-contrived and hostile statutes, for that which ought to be afforded by the consecration of religion, and the honor and affection of manhood.

The subject of education has considerably engaged the attention of the legislatures.

A very elaborate plan of public instruction has been established in West Virginia, which includes the West Virginia University, a state normal school with several branches, and a complete system of free common and high schools. It disposes of the vexed question of text-books, by specifying in the act those that are to be used in the common schools, and adding a penalty for the introduction of any others.

Systems less elaborate, but quite complete, have been adopted in Nebraska and in Michigan.

In Minnesota, an act has been passed for the establishment of public schools for higher education, embracing all branches requisite for admission to the University of Minnesota; and also an act for increasing the facilities of the normal schools. A third act requires "that in all schools instruction in the elements of social and moral science shall be given, including industry, order, economy, punctuality, patience, self-denial, health, purity, temperance, cleanliness, honesty, truth, politeness, peace, fidelity, philanthropy, patriotism, self-respect, hope, perseverance, cheerfulness, courage, self-reliance, gratitude, pity, mercy, kindness, conscience, reflection, and the will. Oral lessons upon one of these topics to be given every day, and the pupils required to furnish illustrations of the same upon the following morning." If a high degree of proficiency

in all these virtues shall be obtained by the pupils of the schools of Minnesota, it will be a good state to live in when they grow up.

In Massachusetts, an act has been passed providing for the introduction into the public schools, of calisthenic and gymnastic exercises and military drill.

Missouri, Nebraska, and Connecticut have passed acts empowering cities to establish libraries at the public expense; a somewhat questionable, however beneficial, exercise of municipal power.

In Michigan, a recent act requires the establishment in every organized township, and likewise in every school district in which a two-thirds vote is given in favor of it, of public libraries, to be maintained by taxation. The state board of education to designate and contract for books, and the municipal authorities to select from the list so designated.

In Arkansas, a joint resolution has been passed, declaring the true pronunciation of the name of the state to be "*Ark*ansaw," instead of "Ar*kan*sas."

In Ohio, it has been provided that where the parents of any minor children shall neglect to support them, habitually ill-treat them, or allow them to engage in begging, the children may be taken from the parents and placed in a suitable orphan asylum, childrens' home, or with some benevolent society.

No state appears to have dealt more liberally with the subject of education and charity, than Kansas. Aside from an elaborate common and normal school system, adopted at the last session, provision is made by annual legislative appropriation for a state university, an agricultural college, a reform school, the education of the blind, of the deaf and dumb, and for the support of asylums for the insane, for idiots and imbeciles, for orphans, and for friendless women.

In Alabama, a normal school for colored teachers has been provided for by law. In West Virginia, provision has been made for the education in separate schools of colored persons

between the ages of six and twenty-one. In Pennsylvania, all distinction on account of race or color in the public schools has been abolished.

Of the necessity for public education, and the benefits of the best attainable education, there can be no two opinions. What is, however, the best attainable education for the mass of mankind, may be another question. Whether the effort to carry common school instruction up to the standard adopted in some states will result in the real benefit of the average pupil, or whether it will tend to disqualify him for the state of life to which it has pleased God to call him, without qualifying him for a better one, may admit of a difference of opinion. And how far the public can be required to defray the expense of higher education, even to those to whom it is undoubtedly beneficial, is a point, that in the present rapid increase of municipal expenses of every description, and the consequent increase of taxation, will undoubtedly require attention. That there must be some limit in this direction is clear. It may be that it will be necessary to find it in the plain education that is best adapted to the plain man.

The question of the true limitation of the powers of municipal corporations, is assuming very great importance. Various legislation during the past year brings it into prominent view, and may probably give rise to serious discussion.

The Ohio idea on this subject, (as on some others) is considerably in advance of the views that have hitherto prevailed. A large number of acts have been passed there, empowering counties, cities, towns, and villages to engage in various enterprises expected to be indirectly beneficial: to build railroads, construct machine shops, glass houses, buildings for manufacturing purposes, infirmaries, childrens' homes, soldiers' monuments, etc.; to purchase toll roads; and to raise money for these purposes by the issue of bonds of the municipality. Many of these acts, while purporting to be general, really limit the authority given to particular towns; it being enacted that any town having, by the census of 1870, a population of a

certain exact number, is authorized, etc., etc. No other town in the state than the one intended having that exact population. And the secretary, in printing the acts, designates at the head of each the town to which it applies. If this is designed as an evasion of any constitutional restriction upon the power of the legislature to grant such authority by other than general laws, its success must be doubtful. Most of the acts authorizing the construction of railroads have already been declared unconstitutional by the Supreme Court of Ohio. It is but just to that tribunal, to anticipate that various other statutes in the same book will meet the same fate.

That the objects contemplated in these acts may be more or less beneficial, indirectly, to the municipalities, may be admitted. Many things are desirable to cities and towns, as to individuals, if their cost can be afforded. But there must be a termination somewhere to the power of the majority to create such benefits at the expense of the minority. And if the line that separates what is reasonably necessary for municipal purposes from what is only desirable, is once passed, it is not easy to see where another can be drawn. If there be no limit, an early bankruptcy must await many municipalities, since the majority of votes and the majority of property are not usually found in the same hands.

That this is not an idle foreboding has been already shown. Tennessee has passed an act for settling the indebtedness of the bankrupt, and, in the language of the act, "extinct" city of Memphis, at thirty-three cents on the dollar. And also a joint resolution providing for a board to devise provisions for the surrender of the charters and the compromise of the debts of other embarrassed cities. Florida has passed a similar act. The well-known financial condition of the city of Elizabeth, in New Jersey, the inability of various western towns to meet their liabilities by any practicable rate of taxation, and the insolvency of at least one rural town in Vermont, where the value of the entire real estate within its limits was found not

equal to its indebtedness, show that municipal bankruptcy is quite possible, and is not confined to one locality.

The subject of possible excessive taxation did not, however, escape the attention of the legislature of Ohio, which passed an act providing that the aggregate of taxes in any town containing, by the census of 1870, a population of 2,729, "shall not exceed in any one year $9\frac{5}{10}$ mills."

The power of municipalities to aid in the construction of railroads has been too generally affirmed by courts of this country to be now open to question. But the results of its exercise have been so frequently disastrous, that it is to be regretted that the early decision of the Supreme Court of Michigan, denying the power, had not become the general law of the land. In various states amendments of the constitution have been within a few years resorted to, in order to put an end to such enterprises by municipalities.

The Ohio legislature, and that of Nebraska, also passed acts authorizing the appropriation by municipalities of any private property for the use of the corporation, irrespective of the necessity, ascertained judicially or otherwise, which has hitherto been regarded as a condition precedent to the taking of private property for public use.

A further illustration of the views of the former legislature on the subject of legislative authority, is found in an act which sets forth that certain named sureties on an official bond have paid a liability incurred by the principal, under such circumstances as to give them no right of action for contribution against their co-sureties, and proceeds to confer such right of action upon them; thus giving by statute to one man a right of action against another, which did not otherwise exist. If this power can be supported, it is probable that many applications for its exercise will arise.

In Missouri, an act has been passed, making cities liable for the destruction of private property by mobs, and making members of the mob liable to the city for the damages sustained.

In Vermont, the statute which has existed there, as in most of the New England states, from a very early period, making towns liable for special injuries sustained in consequence of defects in the highways, has been repealed. The repeal was induced by the many exaggerated and fraudulent claims of that character that towns were subjected to.

In Massachusetts, an excellent provision to exempt mortgage property from double taxation has been adopted, under which the taxation of mortgaged real estate is apportioned in the town where the land is situated, between the mortgagor and the mortgagee, the latter being taxed to the amount of his mortgage as for an ownership in the land itself.

In Vermont, a very stringent tax law has been adopted, requiring a minute disclosure under oath of all property, under penalty of having the list doubled by the assessors. The immediate result has been a very large increase of the assessed property of the state. Whether it will turn out that the increase is permanent, and whether the rate of taxation will be ultimately thereby diminished, are questions that remain to be determined. Experience has usually shown that severe taxation of that species of property which can readily be withdrawn from the jurisdiction, leads in the end to the flight of the property, rather than to any permanent increase in revenue; and that the rate of taxation is not in the long run reduced by an increase in the amount of property assessed.

In New York, vessels registered in the port of New York, owned by American citizens or by New York corporations, engaged in ocean commerce between American and foreign ports, are exempted from taxation. And such corporations, all of whose vessels are so engaged, are exempted from all taxation for fifteen years.

Suits by taxpayers have been authorized in New York against municipal officers, to prevent illegal official acts, waste of or injury to public funds or property, the allowance of fraudulent claims, and to open collusive judgments; and colluding officials may be adjudged personally responsible for claims

fraudulently allowed; all municipal books, vouchers, etc., etc., to be public records, open to the inspection of the taxpayers.

Tennessee has passed an act to pay off her state debt by the issue of a long bond at three per cent. for the principal and arrears of interest.

Minnesota has also provided for the tender to her creditors, holding the railroad bonds of that state, of fifty per cent. of their claims, by the issue of new bonds, provided the other half of the debt be released. The act is subject to the opinion of the Supreme Court as to its constitutional validity; and if the opinion should be such as to require it, the act is to be submitted to the people for ratification. Such a forced compromise of the debts of a sovereign and prosperous state would be an ineffaceable blot upon her fame, through all the great and growing future before her. Let us hope that this step is but an instalment toward the final payment of the uttermost farthing.

The important field of railway transportation, so fertile in dispute, has produced the usual annual crop of legislation.

Nebraska has passed an act providing that no railroad company shall charge higher rates on freight than was charged on the 1st of November, 1880, nor a greater sum for any specific distance than it demands for a greater distance; or grant to any person, upon the transportation of freight, any secret rate, drawback, or undue advantage; or charge for the same service to any person a greater or less sum than is charged to any other person; and that equal terms, facilities, and accommodations for transportation and handling of freight, and for the use of buildings and grounds, shall be given to all persons.

A joint resolution has also been adopted in the same state, requesting Congress to enact laws against unjust discrimination and excessive charges by railroads, which it is declared are "fast becoming powerful monopolies, and are being operated in many cases to the detriment of our citizens, who are in a large majority, by location, compelled to patronize points not competing."

Similar joint resolutions have been passed in West Virginia and Tennessee.

In Maine, an act has been passed, prohibiting railroads from demanding or receiving of any railroad higher rates of freight or fare than it demands or receives of any other railroad; requiring equal advantages to be given by all railroads to all others, and extending the provisions of previous general statutes on the subject.

In Rhode Island, it has been enacted that no greater fare shall be collected of passengers in the cars than is charged at the ticket office.

In Missouri, an act requiring every railroad to maintain at every intersection with any other railroad a depot and waiting rooms, to be kept warm, lighted, and open for the use of passengers. To give public notice of the regular time of starting and running its cars; to furnish sufficient accommodation for the transportation of all passengers, baggage, mails, and express freight that shall be offered for transportation at the place of starting, at the junction of other roads, and at the several stopping places; to stop all passenger trains at the junction or intersection of other roads long enough to allow the transfer of passengers, etc., from connecting trains, and to receive all passengers and freight from connecting or intersecting trains. They are further required, at all towns having a population of 200, or more, to maintain switches and freight houses for the receipt and delivery of freight, and to stop at least one train daily thereat to receive and unload freight. And to receive and deliver all freight at the crossings and junctions of all other intersecting railroads, canals, and navigable rivers.

Other acts in the same state require the counting by railroad agents of all animals shipped as freight, and upon neglect or refusal, the railroad company are made liable for the number of animals specified in the bill of lading, according to the shipper's count. That whenever any shipper shall hire cars from a company, he shall have the right to put into the cars two or more species of live stock, or different kinds of grain, or dif-

ferent articles of commerce, without any greater price than is charged when only one species of such freight is shipped. And that all railroad companies shall furnish at all stations a sufficient number of double-deck cars for the shipment of sheep, to supply the demand, and shall allow shippers to load both decks with sheep to the extent of 20,000 pounds, at no greater rate for the double-deck car than the legal rate of freight allowed for stock.

A recent act in Michigan requires that grain transported by rail shall be delivered at the place of business of consignees when situated upon the railroad track; and that the companies shall allow connecting tracks to be laid by those requiring them.

In Connecticut, railroads are made liable for fires communicated by their locomotives.

In Wisconsin, Maine, and Nebraska, acts have been passed making railroad companies liable for the wages due from contractors to workmen in their employ upon the railroad. And in Nebraska a lien is given upon the road for such services, continuing for two years.

In Maine, it has been enacted that buildings of railroad corporations, on all lands and fixtures outside of the located right of way, shall be subject to taxation by the cities and towns in which they are situated, and in lieu of all other taxes, every corporation is required to pay to the state an annual excise tax, calculated upon its gross receipts, which is divided by the state treasurer among the cities and towns proportionately.

In Colorado, it is provided that if payment of any claim against a railroad company for overcharge or damages is refused, and suit upon it is brought, the plaintiff, if he recovers more than was tendered to him, shall also recover a penalty of $100 for each month since payment was demanded.

In Texas, baggage smashing has been made a misdemeanor.

In Alabama, an elaborate statute for the regulation of railways has been passed, containing some very rigid provisions. More than a just compensation is declared extortion and pun-

ished by fine, and all discrimination between freighters is prohibited. Whether such extortion or discrimination has taken place, is made a question for a jury. Approval of rates by the railroad commissioners is only *prima facie* evidence that the rates are not extortionate, but is sufficient to exempt from the penalty. The tariff of freight is required to be published; and any rebate or reduction in favor of any individual is made a misdemeanor as to both parties, and punishable by fine. A railroad commission of three is established, to be appointed by the governor, out of nine nominated by the senate. The commission is to revise all tariffs, to hear complaints against tariffs approved, and to require changes therein. The commissioners are to examine the books of the company on the application of one-fiftieth of shareholders, or an equal amount of bondholders, and may publish the result.

On the other hand, in Arkansas, Nebraska, Missouri, and Minnesota almost unlimited powers have been given to railroads for the purpose of consolidating with, purchasing, leasing, or forming connections with other railroads in those states; evincing as much of a disposition to create powerful monopolies, as is found in some other states to suppress them.

In New Jersey, railroads have been authorized to construct, acquire, and operate lines of telegraph for commercial and public uses.

Various regulations affecting public safety on railroads have been before mentioned.

This whole subject is fraught with infinite, and it is to be feared, increasing difficulty. The railways, on the one hand, have become indispensable to the transaction of every description of business. On the other hand, their power, their vast accumulation of capital and influence, the disregard some of them have occasionally manifested for the public convenience, and the irritating discriminations they have imposed, have furnished facile material to the demagogue with which to inflame public sentiment against them.

It is easy to see that this controversy, on which we are just entering, may have very serious results. They are to be obviated, if at all, as the mischiefs of most quarrels are, by mutual forbearance. It is for the public to consider the great benefits derived from these corporations, and their fair title to a remuneration commensurate with the large capital employed and the great risk run, and to remember that any serious embarrassments of those interests must react with tenfold force upon the business of the country. And it is for railroad managers, on their side, to bear in mind, that while the public is a patient animal, slow to be roused, and unwieldy in getting into action, its vengeance is very dangerous, and quite likely to proceed to unreasonable extremes. They should beware of grasping at too much, either in money or in power, and avoid especially carrying on a competition with rival routes by means calculated to irritate the public. Moderation, justice, and caution may be found their best protection and their truest interest.

On the subject of agriculture, various legislation has taken place. Efficient laws have been adopted in Illinois, Vermont, Kansas, Delaware, and Tennessee to prevent the spread of contagious diseases among cattle. The power asserted in some of them, to prevent importation, or transportation of cattle from infected districts; to slaughter those that are infected or have been exposed, and to place infected districts under quarantine, is perhaps a strong, but undoubtedly constitutional and beneficial exercise of the power of the government over private property in cases of necessity.

In Michigan, similar provision has been made for the destruction of infected bees, by order of commissioners to be appointed on petition by the judges of probate. And also for the prevention, in the same manner, of the spread of certain diseases in fruit trees.

Provisions adopted in Illinois, Nebraska, Michigan, and Maine for the drainage of land by the construction of drains by the public authorities, at the instance of petitioners in interest,

across the lands, and at the expense of those made defendants in such proceedings, may perhaps be sustained on the score of public necessity, but may not be entirely free from question in respect to their validity.

In South Carolina, considerable inducements in encouragement of immigration have been provided, by returning to immigrants all taxes collected of them, for five years after taking up their residence in the state, except a two mill school tax, but not exceeding in the whole the sum of $1,500. And a very liberal homestead act has been adopted in the same state, under an amendment of the constitution for that purpose, by which $1,000 in land and $500 in personal property, to each head of a family, are exempted from mean or final process, except upon obligations contracted for the purchase of the same.

A homestead law has also been adopted in Missouri, exempting a homestead to the value of $1,500.

In Wisconsin, the stealing of standing timber has been made larceny.

In Minnesota and Colorado, acts to encourage the planting of timber have been adopted.

In Michigan, it is provided that for the planting of shade trees or water troughs in the highway, an allowance out of his taxes shall be made to the land owner; and that shade trees in the highway shall not be cut down without the owner's consent, except in cases of necessity. In the same state a joint resolution was adopted requesting the governor to designate a day in each year, to be known as "Arbor Day," to be devoted to the planting of trees.

In Colorado, an act providing means of irrigation has been passed.

In Ohio, a statute provides for the punishment of fraud in the sale of fertilizers.

In New York, a state entomologist is provided for, whose duty it is to give attention to insects destructive to agriculture.

In New Jersey and Michigan, bounties have been authorized for the raising of sugar, jute, flax, hemp, etc.

The queer vagaries of legislation would furnish of themselves an entertaining chapter, if amusement were the object of this dull paper. Some of them have been already mentioned. In one state it is provided, that in case of trespass upon lands, the plaintiff may waive the tort and sue in assumpsit. What cause of action it is supposed would be left, after "waiving the tort," and why the action should be assumpsit, in preference to the equally appropriate remedies of *quo warranto*, or covenant broken, is not apparent. Perhaps the law-makers thought the action could be sustained upon the implied promise in the original social compact, that every man should refrain from forcible injury to his neighbor. Or possibly some jurist had commenced an action of assumpsit to recover for a trespass, and a special statute was necessary to overcome the prejudice of the court against it.

The criminal law of the same state has been improved, by conferring on justices of the peace the power to punish those who shall be guilty of being "disorderly persons." What manner or degree of delinquency would render one a "disorderly person" is not pointed out in the act, and is wisely left to the discretion of the justices. Probably an "unfit and desartless man" would come clearly within the statute.

In another state, a special statute relieves one P. H. from all the disabilities of non-age. How far advanced in life the young gentleman had become, who is thus released from the thraldom of parental control and from the rules of law affecting other minors, I have not been able to learn. He is doubtless the pioneer in a new enterprise in social reform, in behalf of the rights of infants, of which we may hear more hereafter.

Those interested in the "Apocrypha" will be pleased to learn, that in one state, provision has been made by law for the erection of "subordinate tents of the Maccabees of the world." In another, a joint resolution sets forth, that certain distinguished citizens and a certain able newspaper correspondent

are about to visit Europe, and requests the governor to issue to them a commission to represent the industries of the state, and to collect information at their own expense. Perhaps the object might be better attained by general acts, conferring on all our distinguished citizens who are about to explore Europe, similar official authority, and thus relieve them while abroad, from the humiliation of private life.

In the department of general jurisprudence, various alterations have been made, many of them departures of questionable advantage from the old common law.

In West Virginia and Michigan, parties in civil actions are made witnesses; and in the former state, confessions to clergymen and physicians are protected from disclosure. This ought to be everywhere the law—at least as far as physicians are concerned.

In Connecticut, declarations of deceased persons have been made evidence in actions by or against their representatives.

In Vermont and Michigan, the records of the United States Signal Service have been made admissible in evidence. And in Wisconsin, comparison of handwriting in question with other proved handwriting of a party, is allowed to be made by the jury.

In Michigan, a new system of the descent of property has been established, too elaborate to be recited here. Its principal changes (among others) from the usual manner of descent, are in giving the widow, where there are no children, a life estate in the whole property, with remainder to the father of the intestate; in postponing the inheritance of the mother to that of the brothers and sisters; and in making the husband the heir of his wife, in default of issue, parents, and collaterals.

In Illinois, it is enacted that in any deed conveying an estate in fee simple, the words "grant, bargain, and sell" shall be adjudged an express covenant of an estate in fee, against encumbrances, and for quiet enjoyment, unless limited by other express words in the deed.

In Michigan, the same effect is given to the word "warrant;" and the word "heirs" in a conveyance is declared not necessary to create an estate of inheritance.

In Mississippi, seals on bonds and other instruments have been dispensed with, and they are made operative, according to the intent of the maker, as fully as if seals were affixed.

In Connecticut, the acquisition of an easement over land by adverse use is prevented, when written notice by the owner of the land, that such right is disputed, is served upon the party using the easement, and recorded.

In Vermont, the insolvency act of 1876, not very intelligible before, has been still further obscured by numerous improvements. The principal value of such enactments appears to be, to point out the necessity of a permanent national bankrupt law.

In Tennessee, special preferences in assignments for the benefit of creditors have been prohibited.

In Massachusetts and Michigan, standard forms of fire policies have been prescribed, and all others precluded.

In New York, it has been enacted that if any state imposes restrictions upon the transactions within its limits, of insurance companies organized under the laws of other states, which are more onerous than those imposed by the laws of the state of New York, the courts of New York shall not entertain a suit upon a policy issued by a company organized under the laws of New York, where the loss occurred, or the life insured terminated, within such state. How far such an act may be open to constitutional objections will remain to be considered, after it shall have been ascertained precisely what it means.

In another act in New York, it is provided that the bond of a corporation organized for the purpose of executing official bonds as surety, may be accepted in such cases.

Good Friday has been made a legal holiday in New York, but a bill to further the cause of religion by legalizing lotteries at church fairs, failed to become a law.

In Michigan, Christmas, Thanksgiving, and fast days, New Year's Day, Washington's Birthday, the Fourth of July, and Decoration Day, are made public holidays.

In New York, hotel accommodations have been rendered more pleasant, by an act providing that no guest shall be excluded therefrom on account of race, creed, or color. Impecuniosity seems therefore to be the only disqualification in that state, for residence in a hotel. Some limit has, however, been placed on the extent to which a person may lawfully render himself socially disagreeable, by enacting that the use of vitriol, or other corrosive substance for that purpose, shall be felony. In Tennessee, a very marked discrimination has been declared by statute against that class of travellers known as "tramps," under which it would appear that an innkeeper might safely exclude such a guest, no matter how objectionable his race, creed, or color might be. And in Vermont, an act has been passed prescribing the qualifications necessary to constitute a lawful tramp, so as to entitle him to the various advantages provided by statute for those standing in that relation.

In Ohio, liens have been given upon steamboats for supplies, insurance, wharfage, and for damages to the person or property of passengers, or employees, by the captain or any officer. And in Michigan, a lien is given upon logs, timber, posts, ties, and other forest products, in favor of those employed as laborers in getting them out; thus giving another step forward to the American idea, of circumstantial liens, without possession, in favor of one man upon the property of another.

A provision has been made in Ohio and Florida, for limited partnerships, wherein partners are not liable, personally, for the debts of the firm.

In New Jersey, a former law required all indictments to be found within two years after the crime was committed. In 1879 the act was altered by allowing indictments for malfeasance in office to be found within five years after the offence. It has been recently held by the Court of Appeals in New Jersey, that this act, so far as applicable to offences committed before

the passage of the act, and where an indictment was found more than two, and less than five, years after the offence, was an *ex post facto* law, and void.

In Connecticut, it has been provided that judges of the courts shall be paid, in addition to their salary, the expenses incurred in the discharge of their duty, and that they shall not act as referees.

In New York, the salary of a deceased judge of the Supreme Court is to be continued to his widow for the remainder of the official year in which he died.

In Michigan, the judges are required to furnish the reporter with a syllabus of each opinion for publication. And provision is made for the republication of such of the Michigan reports as are out of print. In the same state, a general law for the incorporation of bar associations has been passed.

The subject of admission to the bar has engaged the attention of several legislatures.

In the state of New York, an act suspends for another year the rules for admission of attorneys and counsellors, adopted by the Court of Appeals under the statute of 1877. By those rules, one year's study in a law office was required of graduates of a law school before admission as attorneys, and two years' practice as attorneys before admission as counsellors. The legislature has by annual act ever since their adoption, suspended these rules, thus enabling the graduates of law schools to obtain admission as attorneys and counsellors on production of their diplomas, as was authorized by the law in force prior to 1877.

In Michigan, it has been enacted that any citizen of good moral character, and twenty-one years of age, may be admitted to the bar, upon passing an examination conducted in open court.

This subject is of great and increasing importance. If the high character that has distinguished the American bar is to be maintained in the future, it must be done by keeping up the standard of legal education. It is to be borne in mind, that the demands upon the knowledge and resources of the profession

are far greater than they were fifty years ago. Jurisprudence has a larger learning, and a far wider field, than it had when an able lawyer might pass his life in dealing with the comparatively few and simple topics of his own immediate locality.

I hope the day is not distant when a regular course of study at a law school will be made indispensable to admission to the bar. A corresponding course is already necessary to the physician, if he desires to claim regular standing among his brethren, and is fast becoming a legal requisite to a license to practice medicine at all. It is as reasonable to require it of one profession as of the other. Existing law schools furnish ample facilities. Others can readily be created as fast as they are required. The subject might be much further pursued, but it would be unnecessary. The Association have already taken it in hand. It has been presented by the distinguished gentlemen who compose your standing committee, with cogency of reason and fulness of learning, and will doubtless further engage your attention. I may be permitted to add, that for one, I concur in the general views of the committee as heretofore expressed. And I trust that the discussion of the subject will not cease, until, upon due and thoughtful deliberation, the Association shall see its way to the high ground on this subject, which I am sure all its members would be glad to be able to maintain.

In Mississippi, an important change has been made in the manner of summoning jurors. By the former law, all male citizens between the ages of twenty-one and sixty, who were householders or freeholders, were placed on the jury list. The recent law requires the supervisors to select for the jury list those persons only who are of good intelligence, sound judgment, and fair character.

In Ohio, an act regulating challenges of jurors has been adopted. It has been made a ground of challenge, among others, that a juryman is of kin to an attorney in the case; or is a party to another action in the same court in which any attorney in the case is employed; or has served as a talesman in any court in the same county within twelve months.

This somewhat enlarges the common law ground of challenge to jurors, but so far as it tends to diminish the employment of those exemplary citizens who are accustomed to attend court for the purpose of getting summoned in that capacity, the effect will undoubtedly be salutary.

In Nebraska, an act prohibits the summoning of any person as a juror oftener than once in two years.

Doubtless the most important legislation of the year is to be found in the adoption in New York of the penal and political codes. These statutes have been very long under consideration, and have enlisted in their preparation much labor, ability, and learning. They have given rise to great difference of opinion, and to a discussion in print, in which the argument on both sides has been exhaustively presented. Time allows me but a few words on the subject.

It is quite probable that codification may be found much better applicable to the subjects of these codes, in respect to which the law is already in large measure embraced in statutes, than to general jurisprudence. If applied to that subject, as is proposed by its advocates, I am unable, for one, to believe that the result can be fortunate. The origin of the common law was coeval with that of our race. Through all the subsequent centuries they have grown up together. It has come down to us with the blood that flows in our veins. Its history has been that, not merely of our jurisprudence, but of our principles of civil liberty, our institutions, our language, our literature, our religion. It has kept pace with civilization, and its triumphs have been the great victories of peace. All the best government, all the best justice the world has ever seen, have grown out of it.

Since *Magna Charta*, humanity, by the exertions of the Anglo-Saxon race, has made a larger and more real progress than in all previous time. Compare the history of those nations in which codes have prevailed, with that of England and America under the unwritten law. If it demonstrates anything, it establishes the superiority of a government and a justice founded

upon general principles, over that which reposes upon any collection of arbitrary written rules. The one has been the constant source of liberty and of human advancement; the other the engine of despotism and the harbinger of national decay.

The Mosaic code was superseded by the Christian religion. But the Author of Christianity devised no code to take the place of that which had failed. He left His work to stand upon those beneficent principles, which few and simple words were sufficient to announce, but which are comprehensive enough for all the vicissitudes of human life. Christianity was the first system of unwritten law. The common law was its legitimate and necessary outgrowth, and in its turn superseded, so far as our race is concerned, the second great code of the world, the Roman civil law. In my humble judgment, we might as well attempt to codify the application of the principles of Christianity, as of the principles of the common law. The process of growth and development that is essential to the one, belongs equally to the other.

Why should we part with a birthright that has proved so beneficent, for the sake of entering upon any doubtful experiment in a matter so vital? In the language of Burke, is not "the old cool-headed general law better than any deviation that can be struck out of the present heat?"

For one, I would not willingly consign to the dissecting table of the codifier, the noble and generous vitality from which all our generations have been nourished; nor consent to substitute in its place any cunningly devised skeleton that can be constructed out of its corpse.

This question has been discussed, as if the choice lay between our unwritten law and such a code of statute law as the best available learning and wisdom may laboriously devise. I do not so regard it. The proposed compilation, as such, may have all the excellence its friends claim for it. How long will it stand, and how and by whom is it likely to be changed? Of what material are our legislatures generally composed? How are their members nominated, and upon what qualifications

chosen? By what considerations are they principally moved, and by what influences controlled? What is their competency on the whole, not merely to regulate the machinery by which the details of local government are carried on, but to prescribe and ordain for a great country the general law of the land? These questions answer themselves. We know that such bodies do not command public confidence; that their sessions are viewed with apprehension, and their adjournments with a feeling of relief. In several of the states whose legislation I have endeavored to review, resolutions appear in their session laws providing for the investigation of charges of bribery and corruption against their members. In others, new statutes aimed at such offences have been thought necessary. In others still, the newspapers that contain the official publication of the laws, contain on the same sheet denunciations of the corrupt and venal means by which, as it is declared, the passage of some of them was obtained. It is not for me to say to what extent these charges are true. In some states, fortunately, they have no application, but we know that in other states they are widely believed to be true.

Even in those legislatures whose integrity is unquestioned, the perusal of their labors is rarely calculated to inspire confidence in their wisdom. In the majority of them—happily not in all—the session laws exhibit hasty, inconsiderate, ill-advised legislation, framed to meet the real or supposed hardship of some particular case, to further some private end, or to reflect some temporary gust of popular feeling; they are characterized by a tendency to extend legislation to all manner of subjects, as well without as within the domain of municipal law, making a new statute the remedy for all ills and all inconveniences; by a looseness and ambiguity of expression that leads to endless uncertainty and litigation; and last and worst, by a fluctuation of purpose that deprives statute law of all stability, and alters, amends, reconstructs, and repeals its enactments from year to year, more rapidly than the courts can grope their way to a construction of the language in which they are couched.

It is to such law-makers as these that it is proposed to commit the whole body of our jurisprudence, in one vast statute, to be cut and carved, patched and plastered, from year to year, in a perpetual succession of change. It is not to be reasonably expected that after a few years' time, enough would remain of the polished and careful work of the original codifiers to be recognized by its authors. While the courts of justice, having no longer any voice or control in the development or growth of the law, will be reduced to the function of trying issues of fact, and ascertaining the meaning of doubtful statutes.

Much speculation has been brought to bear by ingenious writers on the prospective dangers of a republican system of government. The tendency to centralization, to executive usurpation, and toward military despotism, have been set out in colors which thus far, at least, have been but very partially realized. The mischiefs to be apprehended from indiscriminate, reckless, and corrupt legislation do not seem to have been anticipated. But experience is fast pointing out, that the country can endure all its other dangers with less apprehension than the action of its federal and state legislation inspires. It is already manifest, that the danger lies far less in the executive than in the legislative power. And it is not to be denied, meanwhile, that the wholesome checks which the framers of our constitution devised, and which constitute the only protection against arbitrary or unjustifiable enactments, have, by the growing reluctance of the courts to interfere with the legislative power, been suffered in no small measure, to crumble away.

Legislatures in this country are steadily grasping larger powers, and approaching nearer and nearer to omnipotence. It would seem to me, that the efforts of wise men should not be directed toward enlarging the sphere of legislation. To a certain extent it is necessary, and may be hoped to be useful and salutary. Its proper field is wide enough for the capacity of those concerned in it, and need not, indeed cannot, be diminished. But surely it will not be judicious or safe to turn the whole

law of the land into statutes, and to subject it to the dangerous process of their biennial revision.

I believe that he who lives to see that result accomplished, as its advocates predict that it will be, will see also the decay of the administration of justice, and of the profession to which we belong; and the gradual extinction of those principles of civil liberty which the history of the world shows to be inseparable from the common law.

ANNUAL ADDRESS

BY

CLARKSON N. POTTER.

Roger Brooke Taney.

MR. PRESIDENT AND GENTLEMEN OF THE ASSOCIATION:—You have heretofore on like occasions been addressed by distinguished gentlemen, who made persons connected with the Supreme Judicial Tribunal of the country their subject. I am not disposed to depart from this precedent, and shall ask your attention to the services of another member of that august body.

THE OFFICE OF CHIEF-JUSTICE.

The office of Chief-Justice of the United States has been regarded by the people with especial veneration. No other office, not even that of the Chief Executive itself, has been held by them in such high esteem. This is due in part to the peculiar nature of that court, which is not only the highest judicial tribunal in the nation for the determination of the rights of individuals, but has also powers, under our system, of passing upon the rights of states, and the scope and limits of the various departments of government, that make it "more than an Amphictyonic Council."

MARSHALL AND TANEY.

But beyond that, the office has come to be held in such reverence because it so happened that from the earliest period of the republic, during all the years of its growth from weakness and

infancy to the plenitude and power of a mighty nation, this place had been filled by two men, each of whom proved of the highest ability and of exceptional fitness and worth.

From January, 1801, when Marshall succeeded Oliver Ellsworth as Chief-Justice, to December, 1864, when Salmon P. Chase—the great financial minister during the rebellion, whose services are, I think, hardly yet appreciated—was sworn into office, there had been but one instance of the induction of a Chief-Justice of the United States. During all that long period, embracing the life and activity of three generations, and embracing, indeed, almost the whole development of this nation, men had come and had gone, had filled great parts on the stage of life, and taken a leading share in the growth and progress of the people; but year after year, and administration after administration, the chief functionary upon this high tribunal had remained unchanged except in the single instance when John Marshall was succeeded as Chief-Justice by Roger Brooke Taney.

For the first thirty-five years of the century Marshall had continued to be the most conspicuous figure in the judiciary of the country, and the leading mind in the determination of those constitutional questions which so largely divided parties and agitated the judgments of men; and for thirty years after Marshall, his successor equally arrested the attention of lawyers and of citizens all over the land, and contributed to maintain the reverence and admiration which have centred on this court.

Both had been prominent and leading public men before they became judges; both as judges established the highest reputation for impartiality, worth, and ability. Both exercised over their court a controlling influence, and left their mark upon the law and jurisprudence of the day. Both, too, were men of the highest personal integrity, and, beyond that, had about them a certain simplicity of life and manner which savored of the Revolutionary time.

We all recall the anecdote of Chief-Justice Marshall, when upon circuit, driving up one evening to a Virginia tavern in his

splashed and broken sulky, and sitting unknown and unnoticed, listening meekly to a discussion that went on around the tavern fire, until some casual question drew him into conversation, when he electrified every one by his learning and genius and eloquence. So Mr. Taney, notwithstanding his great office, lived the plainest of lives. None of us who remember him, but will recall the singular gentleness and dignity with which he presided, nor the peculiar consideration he showed to young men. No youthful or inexperienced counsel who appeared before that court, but was received by Chief-Justice Taney with an attention and consideration alike gratifying and encouraging. During his argument the Chief-Justice always maintained his attitude of respectful and continued attention, and was never wanting in any thing proper to sustain and encourage the speaker.

THE CHANGES IN OUR COUNTRY.

It may not be unprofitable here, to recall how entirely the growth and development of this nation had been within the period in which these two men presided over the Supreme Court, nor how vast were the changes in the country within their time.

When John Marshall became Chief-Justice, in 1801, the thirteen states which formed this government were still poor and sparse communities stretched along the Atlantic seaboard, having behind them a wilderness without limit, and in large part unknown.

The energy of George Rogers Clarke had indeed secured for these states the territory between the Alleghenies and the Mississippi. But Robert R. Livingston had not yet acquired for us the country beyond the Mississippi; nor had he and Fulton then perfected the application of steam to navigation.

The people of these feeble states spoke the same language, and had the same general character and government; but their origin had been different, their habits dissimilar, their views unlike. Communication between them was rare and dif-

ficult; trade paltry and infrequent. Then a few roads were opened near the coast along which great wains toiled slowly with goods, while on the more inland ways traffic was carried on by the pack horse and the sumpter mule. Men drifted slowly down the rivers on rafts, or worked the batteau up against the current by the aid of the sail or the setting pole, and thus carried on the inland navigation now grown to millions of tons a year. Then a pound of tea or a silken kerchief was an unusual luxury, and a bright ribbon was a handsome present. Even Jefferson, when Secretary of State, and called in haste to meet with the Cabinet, was twenty-eight days of diligent travel from his home at Monticello to New York City. And now we can leave New York at night and reach Monticello comfortably the next morning.

It was for states thus weak and separate and poor; for people thus distinct and frugal and thoughtful; with occupations and habits and temptations wholly unlike those of our generation, that our fathers had established government. And if in establishing it they apprehended evils that never arose, and failed to provide for those which do now exist, it was because the subsisting evils have come in with a growth of riches and consolidation wholly unprecedented, and mainly resulting from inventions and methods of communication then unsuspected. So that the present wealth and centralization of the country could not then have been foreseen, nor provision made against the particular evils which attend it.

But before Taney died how entirely had all this been changed! The settlement which in Marshall's time lay wholly upon the Atlantic slope, had crossed the mountains and passed the rivers, and, hand in hand with civilization and education, had reached to the remotest parts. The feeble states which our fathers united had marched with rapid pace into the front rank of the nations of the world. Already there were great cities upon either coast. Already the means of instant communication and rapid inter-transport reached every part of the land. Forty millions of rich, powerful, and diligent people held the whole

continent from sea to sea; carrying on from the eastern shore a vast commerce with Europe, from the western shore a great traffic with Asia. With the most productive and most varied of soils; with a mineral wealth, whether of coal or iron, copper or lead, gold or silver, or oils, such as had nowhere else been discovered; with capital sufficient for every undertaking and an industry equal to the capital; with a traffic which gathered its riches in all lands and seas; with factories which sounded in every valley, and mills that turned with every stream; with a production that fed and clothed not only our own people, but which went far toward providing for the needs of the old world; these states already enjoyed a material prosperity such as the world had not before seen.

Nor was the material prosperity of the people alone developed, for the time that was to prove their moral qualities came at last—came suddenly, too, and like a thief in the night. For without apprehension, without general or heeded warning, in the midst of a prosperity without precedent, and of a peace that seemed unending, this people were precipitated at once into a mighty war.

Called hastily to arms, they raised spontaneously great armies, vaster than had ever been collected before in modern times; provided them with every implement of destruction; supported, fed, armed, and equipped them; and although engaged in the bitterness of civil war, won for both their factions the admiration of the world by the force and courage and devotion with which they maintained their struggle.

Ere Taney's death the end had substantially come. Already the leaves were swelling in their buds in the southern woods that were to cast their shadows upon a restored and united land, whose people, having asserted their nationality, would then once more move forward to a prosperity that had no equal and a wealth which increased without parallel. So that to-day the European statesman looking across the sea to this great nation,

can see in its future no check; in its growth in power and riches no precedent.

During all these prodigious changes Marshall and Taney remained successively at the head of the judicial department of government; venerated for their ability, their worth, and their services, until the very office they held was thus exalted to a dignity and character unequalled in the republic.

TANEY'S YOUTH.

Roger Brooke Taney was descended from English Roman Catholic ancestors, who came early to Maryland. He was born on the 17th of March, 1777, upon his father's plantation, on the Pawtuxet river. He entered Dickinson College at an early age, and graduated there with honor. The following winter he stayed at home. His father kept fox hounds, and it was the custom of the neighborhood for gentlemen to meet and hunt together. The hunting began at early dawn and continued with vigorous riding over a rough country until night; and this went on day after day, with evenings spent in gay conversation, until the next week, when the hunt was established at some other house.

SUGGESTIONS TO LAW STUDENTS.

In the spring he began to read law in the office of Judge Chase, in Annapolis. There he studied twelve hours in the twenty-four, a thing I have known young gentlemen do in these days; but he afterwards declared that it would have been better if he had read only four or five hours a day, and had passed his other time in thinking over what he had read, and in going occasionally into society. He thought, also, that it would have been better to have read in the office of a practising lawyer. Judge Chase did not think well of moot courts, considering that the discussion of law questions by students induced them to speak upon what they understood imperfectly, and tended to loose arguments, and to asserting principles without proper qualification;

and advised his students rather to attend the courts and take notes of the argument of leading counsel. This Taney did, but subsequent examination satisfied him these notes were defective, which led him to believe that no one was fitted to be a reporter unless he was an accomplished lawyer; a conclusion with which, in these days of infinite books, I think we shall all be disposed to agree.

At the end of three years of close application, and in the spring of 1799, he was admitted to the Bar of Maryland. That same autumn he was elected to the House of Delegates, but was defeated the next year, and then removed to Frederick City and commenced practice.

HIS AUTOBIOGRAPHY.

Long after, when a man of advanced age, he began a biography of himself. His account of the times in which he lived and the men he knew would have been of great interest and value, but, unfortunately, it comes down only to the period when he began practice, where it was most important to have been begun. This is too often the case with such biographies. Once, after hearing from the present President of the United States certain matters connected with the secret history of the war, I asked him if he had kept a journal, to which he answered, "Yes, I kept one with great care until just about the time when I ought to have begun it, and then I became too busy to continue it."

PINCKNEY.

But it so happened that when Mr. Taney came to the bar, there were two great lawyers in practice of whom he has left his opinion. One was Mr. Luther Martin, then far past his prime and much broken; the other was Mr. William Pinckney, whom he, as well as Marshall, regarded as the first of advocates.

Mr. Sumner told me that when a young man he dined with the judges of the Supreme Court, who were then still in the habit of dining together; and that during the dinner Chief-Justice Marshall said that Pinckney was far away the greatest

advocate he had ever heard, and "stood in a niche by himself;" an estimate which, as it came after Mr. Webster's great arguments in the Dartmouth College, Rhode Island, and other cases, greatly surprised Mr. Sumner.

"I have heard," wrote Taney, "almost all the great advocates of the United States, both of the past and present generation, but I have seen none equal to Pinckney. He was a profound lawyer in every department of the science, as well as a powerful and elcquent debater. He always saw the strongest point in his case, and he always put forth his whole strength to support it, and enforced it by analogies from other branches of the law. He never withdrew the attention of the court from this point by associating with it more questionable propositions obviously untenable. He seemed to regard such arguments as evidence of a want of legal knowledge in the speaker. There was, however, one defect in his mode of speaking. His voice and manner of intonation did not appear to be natural, but artificial and studied. There were at intervals sudden and loud outbreaks of vehemence, with impassioned gesticulation, which neither the subject-matter nor the language actually spoken seemed to call for or justify. This want of naturalness in tone and manner was unpleasant to those who heard him for the first time, and impaired the effect of his oratory until you became accustomed to it, and forgot it in attending to the argument. But a man who, at the age of fifty, spoke in amber-colored doeskin gloves could hardly be expected to have a taste for simple and natural elocution. His manner was dressed up—overdressed—like his person." But Taney added that Pinckney's speeches must have been much admired or his style would not have been imitated; for it affected the courts, and even Marshall's opinions in the cases Pinckney had argued "were more ornate and embellished than at other seasons."

Other contemporaries confirm this estimate of Pinckney. Rufus King spoke of him "as having enlarged his admiration of the capacity of the human mind." And John Randolph styled him the boast of Maryland and the pride of the United

States, who filled the first place in the public estimation in the first profession; and yet nothing is preserved of him worthy of such high praise. *Verba dicta pereunt—Litera scripta manet.*

TANEY AT FREDERICK CITY.

Taney remained at Frederick for twenty-two years in the practice of the law. His health was always delicate. He speaks of it as being infirm from his earliest recollection. His feelings were vehement and his temper passionate. On the other hand, he possessed the highest integrity, simplicity, and purity of character, and was governed by an absolute sense of justice. Beyond this, he was a man of entire self-control, of grand courage to do right, of large industry, of extraordinary powers of analysis, and of clearness and vigor of mind. He presented his cases with fairness, disdaining to take advantage of trick or deceit, shrunk from no duty that an advocate owes to clients because of public opinion or surrounding circumstances, gave to everything thorough preparation, and being learned in all the science of pleading and niceties of practice, devoted all his acquirements to the duty in hand. Naturally such a man achieved success; not rapidly, indeed, but gradually and steadily. And so year after year his practice increased, his reputation spread, and his standing became assured.

He began life as a Federalist, but dissatisfied with the conduct of the Eastern Federalists in the war of 1812, left that party, but held no political office until, in 1816, he was elected to the Senate of Maryland.

TANEY IN BALTIMORE.

In 1823 he removed to Baltimore, and at once took rank there as one of the leading advocates of a bar always distinguished for its learning and brilliancy and power. We find Judge Story writing—"hitherto we have had very little of that inspiring eloquence which makes the labor of the law light. But a case is just coming on which bids fair to engage us all in the best manner. Webster, Wirt, Taney—a man of

talent whom you have probably not heard of—and Emmett, are the combatants." And somewhat later Mr. Wirt declared that there was nothing that he dreaded to encounter at the bar so much as Taney's "apostolic simplicity," and on another occasion spoke of him as a man of "moonlight mind—the moonlight of the Arctics, with all the light of day without its glare."

The reports of the state of Maryland, at this period, attest the extent and importance of his practice and the eminent position he held; and in 1827, by the general voice of the bar, he was appointed by an administration opposed to him in politics, attorney-general of that state.

MADE ATTORNEY-GENERAL.

But his calm and exclusive professional life was soon to be disturbed for an active and exciting political career.

After General Jackson became President, the difficulties about Mrs. Eaton rendered it necessary that he should have a new cabinet. Mr. Taney was selected for Attorney-General, but he had not been long in office when he became involved in the controversy with the Bank of the United States.

JACKSON AND THE BANK OF THE UNITED STATES.

The bank had applied for a renewal of its charter; Congress had passed a bill for such renewal; General Jackson, with the advice of Mr. Taney, vetoed it. This brought on the great contest between the bank and the President, which entered into the presidential election of 1832. The election resulted in the success of General Jackson, and he subsequently determined to remove the moneys of the United States deposited in the bank.

SECRETARY OF THE TREASURY.

The charter of the bank gave that power in terms to the Secretary of the Treasury. The then secretary, Mr. Duane, refused to make the removal. General Jackson then dismissed Mr. Duane and appointed Mr. Taney in his stead, who there-

upon removed the government moneys from the bank and lodged them in the state banks. The bank met this removal of the government deposits by a general contraction of its loans theretofore greatly expanded, and this, in turn, brought on widespread bankruptcy and ruin, for which the country, by a long course of speculation, had been preparing. All this occasioned the most intense bitterness between General Jackson and the opposition which sided with the bank, and for this Mr. Taney came in for fullest share. The removal of the deposits was charged to have been the price of his nomination to the Treasury. We know, now, that this charge was without foundation, and that when Attorney-General he had urged that the government deposits were not safe in the Bank of the United States, and that such power and control of public moneys by any corporation were dangerous to liberty.

Mr. Taney had been nominated for Secretary of the Treasury in the recess of Congress. When it convened he made a report of his action. The Senate condemned his report and called upon him for a report of the finances of the country, which he sent in. But the Senate, after high debate, declared his report unsatisfactory, and passed a resolution censuring the President for removing the deposits. This was the famous resolution that was subsequently expunged. The Senate also rejected Mr. Taney's nomination for the Treasury, the first instance in which the nomination of a cabinet minister was rejected. The following day he resigned and returned to his practice amid the plaudits of his friends, who, in the language of Mr. Van Buren, declared him "to have left the office with imperishable claims upon the favor and confidence of his countrymen."

In accepting the place of Secretary of the Treasury, Mr. Taney had expected the hostility which followed. He said himself, "I should have been blind to history if I had not expected it. No man who has at any period of the world stood forth to maintain the liberties of the people against a moneyed aristocracy, grasping at power, has ever met a different fate."

NOMINATED FOR THE SUPREME COURT.

Toward the close of that year, Judge Duval having resigned, the President nominated Mr. Taney for the vacancy on the bench of the Supreme Court. The Senate refused to confirm him, although Chief-Justice Marshall himself favored his confirmation.

MADE CHIEF-JUSTICE OF THE UNITED STATES.

Some months after, Marshall having died, the President nominated Taney to be Chief-Justice in his stead. In the meantime changes had occurred in the Senate; and though his confirmation was bitterly opposed by Mr. Clay and the other friends of the bank, he was in due course confirmed. Years after Mr. Clay made the *amende*, and declared Taney "to be the fitting successor to Marshall."

In the March following, as Chief-Justice, he administered the oath of office to Mr. Van Buren when inaugurated President. One can imagine the flavor with which General Jackson, after witnessing that ceremony, exclaimed: "Yes; and there is my defeated minister to England sworn in as President of the United States by my defeated judge of the Supreme Court."

Taney was nearly sixty years old when he became Chief-Justice. His health continued infirm. But in respect of his mental powers there was at no time any failure or infirmity whatever. His memory, his clearness of apprehension, and power of reasoning remained vigorous to the very end of his days.

MARSHALL AND CONSTITUTIONAL LAW.

Chief-Justice Marshall was most eminent as a constitutional lawyer. Under our dual and limited system of government, questions as to whether government possessed a particular power at all, and if so, to which of our dual governments the authority belonged, were a necessity. About such questions there had been discussion from the beginning; not only in

the courts and halls of legislation, but in the press and on the stump; discussions that were continued in every country store and about every bar room fire until the whole people had been educated in the dual nature of the government, and as to which of the governments—whether state or federal—a particular power belonged.

Marshall's views generally favored the national authority. You called our attention, sir, to the uniform concurrence which had followed his decisions. But it should be remembered that his views have been supported by the physical changes in the country, and that in the long run it is physical causes which control governments. This country is now as different as possible from that for which our fathers feared disintegration. Had they foreseen the modern means of communication they would have had no such apprehension. For no sooner had the steamboat begun its journeys up the great rivers of the interior, than it drew together, within days of each other, people before separated by weeks, and with this, wealth and population increased; and by these in turn new means of intercommunication were established. Roads were opened, turnpikes built, canals dug, post routes extended, newspapers distributed; day by day the people grew richer; the wilderness was step by step occupied and overcome; trade and intercourse between different parts multiplied, and a better understanding and greater homogeneousness among the people of the different states followed; until in time the railway was invented, drawing together within hours the people whom the steamboat had only brought within days of each other; and then, last and most centralizing of all, the telegraph was introduced, putting all parts of the land into instant communication with each other.

And so the views which favored centralization, having been in accord with the existing changes and conditions of the country, have prevailed. Year after year there has been an actual physical consolidation going on. Reason how we may

as to what the fathers intended, the fact remains that this is a nation—a nation if you please, because the fathers intended that it should be so, but a nation whether they intended it should be so or not. Because occupied by one homogeneous people, speaking one language, holding one general faith, having common occupations, interests, and hopes; because the country itself is knit together by its natural formation—by great rivers and lakes—and by every artificial means of intercommunication, and by utmost inter-state traffic and interests; and because cemented by the blood and memories of a great war. Such a country is a nation by the higher law of natural causes, and while these continue its unity must continue.

But Marshall's opinions were far from obtaining immediately after his death. The legality and utility of the Bank of the United States, which he sustained, the people rejected and condemned. The right of the states to make regulations as to passengers from foreign ports; to incorporate banks to do business in behalf of the state; to grant franchises, such as bridges, ferries, and the like, notwithstanding previous grants, unless the first charter was exclusive in terms; and the right of the state corporations by comity to make contracts and carry on business in the other states, were all questions upon which the Supreme Court sustained the views of Judge Taney, and is understood to have done so against the views of Marshall. Indeed, years after Taney became Chief-Justice, Judge Story wrote that he was convinced that the doctrines and opinions of the old court were losing ground, especially on great constitutional questions, and that new men and new opinions had succeeded.

But the present physical consolidation of the country had not then taken place; the railways were but just begun; the telegraph had not been introduced at all, so that the natural and necessary effect of their powers of centralization were not yet felt. Subsequently they were felt, and doctrines of centralization and national authority prevailed with them.

THE CHANGES IN OUR GOVERNMENT.

I do not think it likely that constitutional questions will hereafter often come before the Supreme Court. Indeed, if the second legal tender decision is to stand,—which in effect held that Congress, under the grant of the auxiliary powers, might adopt any means it deemed expedient to carry into effect any of the delegated powers, whether such means were adapted to the exercise of that power or not,*—the nature of this government may be said to be changed. There will then really be no limitation upon the powers of Congress, except such direct restraints as are expressed in the Constitution. Perhaps it would be better if this could be distinctly understood; not that our government has too many limitations, but, on the contrary, that we might thus come by more efficient ones. It is, indeed, the limitation of power which is the special advantage of our system of government, so that while the people retain supreme power they are subject to certain restraints in exercising it. The purpose of the fathers was to secure government by the people, but not by their first impulse. The very object of written constitutions, and of dividing government into different bodies and departments, was to secure the deliberate judgment, the sober second thought of the people.

It is said that Jefferson and Washington had been discussing the wisdom of the bi-camera system—should there be a legislature with two chambers or with only one. Jefferson had maintained the wisdom of a single legislative chamber as in France. At supper he poured out his hot tea into a saucer. "Why," said Washington, "did you do that?" "To let the tea cool," said Jefferson. "Quite right," said Washington, "and just so we need two legislative chambers to give the judgments of legislators a chance to cool."

NECESSITY OF DIRECT LIMITATIONS.

From the original nature of our government, what was not granted to the Federal authority it did not have. Those who

* 12 Wallace, 484, 490.

favored local government, therefore, took the side of a strict construction of what was granted. But there came a time when that construction was considered to militate against the nationality of the government and the unity of the people, and then it went down. If those of us who seek limited and localized government—and I am one—would realize that state rights are but a means, and not an end, and would seek to restrain Congress by direct limitations, instead of by constitutional construction—just as the people of the great states have, of late years, further limited the powers of their legislatures—we might perhaps prevail better in our views.

OUR FORMALISM.

But it is a peculiarity of English-speaking peoples to hold on to usages and forms after the reason for them has passed away. Our history and our law are full of illustrations of this. Look, for instance, at the preposterous manner in which we hold on to days of grace, generations after the reason for them and the use of them has ceased, and insist on making our most important contracts mean what they do not say; in having sixty days mean sixty-three or sixty-two days, or sometimes sixty-one days, but never what the contract says, and thus in keeping up a constant source of confusion and litigation and loss, to no possible advantage; when one stroke of the pen to the effect that "days of grace are abolished," as in France, would have restored these contracts to their expressed meaning, and put an end to a perpetual source of doubt, vexation, and loss.

By the way, let me say here, that it is just such reforms in the law that it seems to me might be fitly suggested by a national bar association.

THE SUPREME COURT.

But while I do not think the Supreme Court will have so many constitutional questions to consider, the importance of that court will not be diminished. On the contrary, the natural result of the consolidation of these states, and of the increase in

inter-state commerce, is to enlarge both its jurisdiction and the number and importance of its decisions. It is already so overtaxed with causes as almost amounts to a denial of justice. Something ought to be done to relieve this. For myself, I see no great difficulty in affording the court relief, without either materially changing its jurisdiction, or the purposes for which it was organized. But in some way such relief should be had.

So we ought all of us to use our voice and influence to have the vacancies in that court filled by sound, able, high-minded lawyers. A man may have been a successful politician, and yet not make a competent and useful judge, and *vice versa*. What we want upon that bench, of all things in the world, are pure, able, learned, experienced, and independent lawyers.

TANEY'S SERVICES AS CHIEF-JUSTICE.

I may not dwell upon Taney's services as Chief-Justice; his decisions are too late, and we all of us consult them too frequently, not to be able to form our own judgment in respect of them. "Taken with those of the other judges of that court, they form a body of law, constitutional and otherwise, and in every department of the profession unsurpassed in the records of courts in the security which it gives to political, personal, and municipal rights." The reports during the twenty-eight years in which he presided in the court, give about three hundred of his opinions. Of these only seven are dissenting opinions, and three of these are cases in admiralty turning upon questions of fact. Indeed, there seems, during all these years, to have been but twenty-six cases in which he differed from the court in its judgment, and in nearly every one of these cases he had the concurrence in his dissent of two or three of his most eminent fellow judges.

And here let me add, that one can hardly read Taney's opinions, particularly in cases like that of the Charles River Bridge, without realizing that—far from wanting, as has lately been asserted*—he, indeed, signally possessed "that insight,

* New York Tribune, July 29, 1881.

that unconscious sympathy with human progress, which induces a judge, while scrupulously adminstering existing law, to expand and advance and develop it commensurate with human needs."

His associates have told us that his opinions were less numerous than they would otherwise have been, because he was absolutely free from vanity himself, and earnestly desirous of giving them all an opportunity of expressing their views.

AND AT CIRCUIT.

During all these years he held the terms at his important circuit, and his learning and ability were not less conspicuous there than upon the appellate bench. It is related of him, that in most complicated and perplexing cases where counsel had spent weeks in preparing arguments and prayers for instructions, he would anticipate them by a statement to the jury so full, so accurate, so fair, disposing of every question connected with the case as to obviate their labors, and overwhelm them with surprise and admiration.

He was prompt, too, in setting precedents, where proper. In a case before him for infringement of the copyright of a popular song, which was full of difficulties as to how far the two airs differed, some experts insisting they were identical, and others that they were substantially different, he had a professional singer sing the two songs to the jury that they might judge for themselves whether they were the same or not.

AND IN PERFECTING THE PRACTICE.

The business of the Supreme Court came from all parts of the country, and included the most diverse cases arising out of many systems of law, and under various modes of procedure—some at common law, some in chancery, some in admiralty, some under the civil law, and others under the special statutes of the United States. This diversity in the origin of causes, and of the systems under which they were presented, favored

that comprehensive and common sense view of questions, whether of pleading or of rights, which I think has, on the whole, always distinguished the Supreme Court. But the orderly conduct of such a diversified business, when the docket became crowded, was alike difficult and important. Before Taney's time the practice had been somewhat loose and unsettled. He had a natural aptitude for reforming and perfecting it, and he reduced the system of practice of that court into a uniform and consistent whole, and until the day of his death wrote all the opinions upon such questions.

THE PERSONAL REGARD FELT FOR TANEY.

The Supreme Court had, from the beginning, been noted for the harmony and confidence and friendship which existed among its members, even while great differences of opinion upon the questions before them prevailed. In the early times, when Washington was small and had few conveniences, the judges generally lived in the same quarters and dined together, and these dinners afforded an opportunity for consultation and friendly reunion. In the simplicity of those days, when the only indulgence was a bottle of Madeira in bad weather, Chief-Justice Marshall would, it is said, occasionally ask one of his associates to step to the window and see how the weather was, and when that judge, seeing everywhere a cloudless sky and a brilliant sunshine, was compelled to report that the day was fine, he would reply: "Well, our jurisdiction is so extensive that I am confident it must be raining within it somewhere to-day, and I think, on the whole, we will have our bottle of Madeira." And I have seen a note written by the Chief-Justice to the Clerk of the court, asking him to have a ham boiled by a following Thursday, in Maryland fashion, when the Chief-Justice would have one boiled in Virginia fashion, that they might both be then submitted to the judges for discussion and decision.

The changes and growth of the capital broke up this common mess of the court, but the cordial relations between its members

continued throughout all Taney's time. There was something about the man himself so winning and attractive as to make it impossible not to respect and love him. At the very end of his life, one who had been appointed marshal of the court against his wishes, remarked: "The Chief-Justice is the greatest and the best man I ever saw. I never was in his presence but that his courtesy and kind consideration made me feel that I was a better man for being in his presence."

SLAVERY.

Nothing would have seemed more unlikely, when Taney became Chief-Justice, than that his life would again be disturbed by political conflict. But he was fated to end his days in the midst of a civil war, following bitter political strife, in which he was a leading figure.

When the vast territories which had been added to the national domain began to be settled it became necessary to organize and legislate for them. As regards these territories, whose early acquisition had not been foreseen, the fathers had made no settled provision. We, of the North, said these territories are national property; the nation has never established slavery in them; freedom is their natural condition; it is the only just condition—the only condition consistent with republican government; these territories must be free. On the other hand, the South said these territories are indeed the common estate of the nation, but by the national compact we are entitled to the full enjoyment of our property in all parts of the United States. Property in slaves existed in all the states when this government was founded. Because you of the North no longer care to own such property we are under no obligation to abandon it. Freedom is not the only natural condition, and negro slavery is not inconsistent with republican government. We must be suffered to take our property with us into these territories.

When men cannot agree upon the control of a thing, to divide it is the only compromise possible; and as no line of division

to the Pacific could be agreed upon, it inevitably followed that the North would insist upon the whole territory for freedom.

Both parties attempted the colonization of Kansas, and disturbance and outrage and blood were the result. A portion of the North were prompt in announcing their intention of protecting southern rights, and I think in this way largely misled the South and furthered the difficulties which followed. Another portion were equally positive in their determination for freedom. It was hoped that this question might be settled by the compromise measures in Congress, and by the judgment of the Supreme Court.

THE DRED SCOTT CASE.

The question whether the negro was a citizen of the United States, and the right to reclaim fugitive slaves and to maintain slavery in the territories came before that court for its decision. The court decided in favor of the masters, and selected Judge Taney to write the opinion. In an historical review of the condition of the negro at the time the Constitution was adopted, he used the words: "They had for more than a century before been regarded as beings of an inferior order, and so far inferior, they had no rights which the white man was bound to respect." These words, "that the negro had no rights which the white man was bound to respect," were separated from the context and declared to be the sentiments of the judge, and this brought upon him a storm of indignation for his cruelty and unchristian utterances, which was the more undeserved because of his own conduct in respect of slavery. He had long before manumitted all his own slaves; had never refused his professional aid to negroes seeking the rights of freedom; he had even defended a person indicted for inciting slaves to rebellion at a time when the community were violently excited against the offender, and against Taney for his defence; when pressed with the gravest business, he had been known to stop in the streets of Washington to help a negro child home with a pail of water; and he had uniformly conducted

himself to that unfortunate race with the greatest kindness, charity, and sympathy.

The compromise measures of Congress and the judgment of the Supreme Court failed to settle these differences. It was idle to argue that in the earliest English days there were slaves who had no rights; if a stranger slew one his lord recovered the damage; if his master killed him he was but a chattel the less, and that his descendants were slaves as well: "mine," said the early English proverb, "is the calf that is born of my cow;" that when Richard II. had promised to the rising, headed by Watt Tyler, they should be free, Parliament declared the king's grant "was null and void;" that "their serfs were their goods," and that the "king could not take their goods but by their consent;" that in the time of Charles II. all the judges united in declaring negroes to be merchandise, liable to forfeiture like other goods; that years after our independence they were treated, in British statutes, as articles of merchandise alongside of rum and iron; and that slavery existed in, and was recognized by the laws of every state when the constitution was formed; and that there could be no higher law between parties than the terms of their agreement.

To this it was answered—that where existing conditions could not be foreseen, general agreements could not prevail against natural right; nor was it possible to believe that when the fathers said all men were free and equal, they meant only white men; but that if they did, they had no power to bind their descendants forever to a doctrine so unjust.

THE END OF SLAVERY.

Accordingly, at the next presidential election the people declared against the Supreme Court construction, and elected a Congress and executive bound to overthrow it.

The result was that the South then undertook to go out of a union in which their rights were, as they thought, refused, and this brought on the war.

The effort to extend slavery destroyed it. "He that carries eggs," says the Chinese proverb, "must avoid controversies." The presence of armies necessarily set the slave himself free. Whatever else may happen in other conditions, and with other races, African slavery can never be restored. Just as gunpowder destroyed the feudal system, the physical changes in the country, the means of instant communication and rapid inter-transport, the trade and mechanical occupations of our day, are inconsistent with the existence of such an agricultural serfdom. Those who fear and those who hope—if there be such—for a restoration of negro slavery alike fear or hope in vain. Already there is a great gulf between it and us. Indeed, it is difficult for us even now, and it will be impossible for our children to realize how intense and bitter was the strife over slavery.

TANEY'S DEATH.

Near the very close of the war, in the eighty-eighth year of his age, Mr. Taney died. No one can read his reported opinions; the announcement of the Supreme Court on the occasion of his death; the eulogiums of the great counsel who practised before him; the declarations of his associates, and, above all, of that great judge who had differed with him most—Mr. Justice Curtis—and the speeches* at the subsequent Bar Meeting, in Washington to establish a Taney fund, without being convinced that he was at once a pure, wise, and great man and jurist. He was indeed a man of iron will, of undaunted courage, of absolute purity, of ripest learning, of largest powers, kindest charity, and loftiest patriotism. In the highest and best sense a Christian, a lawyer, and a gentleman. In the words of a quaint writer of the seventeenth century, it might be said of Taney—that while he lived he was the delight of the courts, the ornament of the bar, the glory of his profession, the terror of deceit, the oracle of his countrymen. And when death

* By Mr. Evarts, Mr. Garfield, Senator Carpenter, Senator Edmunds, and others.

shall call such an one as he to the Bar of Heaven by a *habeas corpus cum causis*, he will find the Judge his advocate, nonsuit the Evil One, obtain a *liberate* from all his infirmities, and continue still one of the long robe in glory.

OUR PROFESSION.

If I have dwelt upon the career of this great judge when I had so little new to tell, it is because ours is a profession whose labors and talents are expended for the most part upon the controversies of individuals and about transitory affairs. And yet it is of all professions the one most important to good government and to just living. In our favored land, with its great natural advantages and its freedom from arbitrary government, where individual rights are protected even against the government itself by fundamental laws, the administration of the law is that exercise of government which is at once the most frequent and most important. To it we must look for relief from injustice, for the preservation of personal rights, and for the protection of property. We may differ about political questions, about the nature of government, about public policy; but for ourselves and our daily lives, what we most need, what is of the highest importance to each one of us, is a pure, just, wise, and fearless administration of the law.

We cannot, then, too highly honor those who, by long life and great gifts and opportunities, have been permitted to adorn the administration of the law and our profession. We owe it to our high calling, to the cause of good government and of right living, to see justice done to their services, to cherish their names, and to keep their memories green.

PAPER

READ BY

THOMAS M. COOLEY.

The Recording Laws of the United States.

Of the securities provided by law for the protection of property, perhaps none is more important than the registration of land titles. We put aside, very early, the old English notion that the best evidence of title was the possession of the title deeds, and adopted a system which, in theory, proposed to place in a public office, accessible to every one, a record of the titles to real estate, by which every man might safely buy or safely accept encumbrances. Speaking generally now of the system, the theory seems to be nearly perfect. Every instrument affecting the title to lands must be executed in the presence of a public officer, who is empowered by law to authenticate the act, and it is only on his certificate, given after the observance of all due formalities, that the instrument can go upon record. The record is made up by another public officer, who is permitted to record nothing which is defective, and who shall carefully note the day, hour, and minute when any instrument is presented for record. To insure the prompt recording, the grantee or encumbrancee is notified that his unrecorded instrument shall be invalid as against any subsequent deed or encumbrance which a *bona fide* taker may receive from the same party, and place first upon record; and as this penalty seems to render it reasonably sure that there will be no needless delay, it is supposed the record will show the actual condition of the title, except in

cases of gross neglect. Those cases the law declines to provide for; assuming that it is better that parties failing to record their titles shall run all risks of loss, than that the public record shall be an unsafe reliance. We therefore find this record generally trusted, as if it were something almost infallible; and titles are bought and mortgages taken in reliance upon the mere certificate of the recorder that the grantor or mortgagor is owner.

It is nevertheless well understood that it is impossible such records should be an entirely safe reliance, because many things that may affect a title either cannot be shown by them under any circumstances, or cannot be shown under any provisions of law as yet made for the purpose. Heirship is one of these. If the apparent owner of the record title dies, whoever purchases of his supposed heirs must run all risks of error or misinformation in learning who they are. Provision has indeed been made in a few of the states for recording a certificate of the heirship from the court having jurisdiction of the estate of decedents, but these provisions are exceptional, and the certificate would of course be ineffectual to cut off the right of an actual heir, unless given under provisions of law which require a judicial hearing and determination, after notice to all concerned. Questions of marital right in lands are also not to be settled by a mere inspection of a record; and not to mention other things which might defeat an apparently good title, it is sufficient for our present purpose to say that any deed in the chain of title may prove to be incorrectly recorded* or be forged, or be given

*The question upon whom the law shall fall if one is misled by relying upon a record which is incorrectly made, is one on which there are varying decisions; the different conclusions being reached on differences in the recording law. That a deed duly executed and left for record by the grantee is constructive notice to subsequent purchasers, encumbrancers, and creditors, notwithstanding errors in recording it, see Merrick *vs.* Wallace, 19 Ill. 486; Polk *vs.* Cosgrove, 4 Biss. 437; Riggs *vs.* Boylan, 4 Biss. 445; Mims *vs.* Mims, 35 Ala. 23. That the record is notice, though not indexed, see Bishop *vs.* Schneider, 46 Mo. 472; Garrard *vs.* Davis, 53 Mo. 322; Curtis *vs.* Lyman, 24 Vt. 338. But the following cases hold that if errors occur in recording, the record is notice

by a minor, and therefore voidable; or by an insane person, and therefore wholly void. The record, then, instead of being a safe reliance, is a mere convenience, by the aid of which we may perhaps, on proper inquiry, discover where and what the title is.

But our purpose in this paper is to call attention, not to those things in respect to which the record comes short of furnishing the full information for which the general public looks to it, but to positive faults of the recording laws, which render the records convenient instruments of fraud and robbery. In doing this, we concede the great advantages to be derived from a registration of titles, but we affirm that the statutes contain defective, misleading, and dangerous statutory provisions, and that these invite a lax administration of other provisions which are not improper in themselves, but only become so in the manner of execution.

The most conspicuous feature of the prevailing system is, that conveyances shall be certified for record by a public officer, duly commissioned and empowered for the purpose, who shall in person supervise the execution and receive the acknowledgment of grantors that they have freely signed and executed the instruments to which their names are appended. This certificate authenticates the conveyance for record, and when nothing appears on the face of the instrument to contradict it, is evidence of due and free execution in accordance with the provisions of law. In the common understanding of the term, the official act of taking and certifying an acknowledgment would be called ministerial, rather than judicial; for it is not supposed there are any adverse parties, and the officer is to decide

only of what appears on its face. Frost *vs.* Beekman, 1 Johns. Ch. 288; Beekman *vs.* Frost, 18 Johns. 544; N. Y. Life Ins. Co. *vs.* White, 17 N. Y. 469; Sanger *vs.* Craigue, 10 Vt. 555; Baldwin *vs.* Marshall, 2 Humph. 116; Lally *vs.* Holland, 1 Swan, 396; Shepherd *vs.* Burkhalter, 13 Geo. 443; Chamberlain *vs.* Bell, 7 Cal. 292; Barnard *vs.* Campau, 29 Mich. 162; Jennings *vs.* Wood, 20 Ohio, 261; Scoles *vs.* Wilsey, 11 Iowa, 261; Parret *vs.* Shaubhut, 5 Minn. 323; Brydon *vs.* Campbell, 40 Md. 331; Terrell *vs.* Andrew County, 44 Mo. 309; Gilchrist *vs.* Gough, 63 Ind. 576. That an indexing is essential, see Miller *vs.* Bradford, 12 Iowa, 14; Speer *vs.* Evans, 47 Penn. St. 141.

upon nothing but formalities; but in its effect, the act has many of the qualities of a judgment, for it determines, *prima facie* at least, that the conveyance is the genuine deed of the party purporting to execute it; and, if in fact, the nominal grantor is personated by another, as he may be, the acknowledging officer may by his certificate *prima facie* deprive the real owner of his title. There may consequently be adversary parties when an acknowledgment is to be taken; the pretended owner, who is not such in fact, and the real owner, who is being personated for fraudulent purposes; and the certificate of acknowledgment is a decision between them, which in many cases it will be impossible to overcome. Moreover, in some cases, the officer is required to see that the instrument is not executed under compulsion, and in those cases the law supposes that there may be persons operating to compel a conveyance by duress, and it places the officer between them and the grantor for the purposes of protection. It is not inaccurate, therefore, to say that the act of certification is at least *quasi* judicial.*

* The authorities generally say, that an officer in taking the acknowledgment of a deed acts judicially, and that in the absence of a showing of fraud or duress, his certificate is conclusive. Louden *vs.* Blythe, 27 Penn. St. 22; Hall *vs.* Patterson, 51 Penn. St. 289; Heeter *vs.* Glasgow, 79 Penn. St. 79; Singer Manuf. Co. *vs.* Rook, 84 Penn. St. 442; O'Ferrall *vs.* Simplot, 4 Greene, Iowa, 162; Graham *vs.* Anderson, 42 Ill. 514; Hill *vs.* Bacon, 43 Ill. 477; Calumet, &c., Co. *vs.* Russell, 68 Ill. 426; Russell *vs.* Baptist Union, 73 Ill. 337; Johnston *vs.* Wallace, 53 Miss. 331; Harpending *vs.* Wylie, 14 Bush. 380. In Graham *vs.* Anderson, *supra*, in which a married woman whose name appeared to a deed undertook to prove that she was never privately examined as required by law, Ch. J. Breese said: "We have examined the authorities on this point, and we think where the certificate of the privy examination of a married woman is in the form required by statute, it is not sufficient, in order to impeach it, to allege that she did not acknowledge the deed as her act and deed; that she did not release her homestead right. There must be some allegation of fraud or imposition practised toward her; some fraudulent combination between the parties interested and the officer taking the acknowledgment." Citing Ridgeley *vs.* Howard, 3 Har. & McH. 321; Jamison *vs.* Jamison, 3 Whart. 457; Hartley *vs.* Frosh, 6 Texas, 208. In other cases it has been said, that to avoid the certificate of acknowledgment, there must be fraud with which the grantee is connected: Baldwin *vs.* Snowden, 11 Ohio St.

Now, when the great extent of some of our states is borne in mind, and the vast number of transactions in real estate which are constantly taking place, we shall probably concede that the function of certifying conveyances so that they shall go upon record and import verity, is among the most important and responsible which the statutes confer upon any officials; and inasmuch as adversary parties are not expected to supervise their proceedings, common prudence would dictate that the authority be conferred upon such only as are carefully selected for their wisdom, integrity, and prudence. Indeed, care is even more important here than in the selection of judicial officers proper; for the latter must exercise their authority in public, with adversary parties watching their proceedings, and under provisions of law for the public correction of their errors. Naturally, therefore, we should expect to find in the statutes provisions for the careful selection of a small number of certifying officers, and which should require them to exercise their authority with circumspection, and to give their certificates only after they have made sure they will accord with the fact. The undoubted fact is, however, that in many of our states almost

203; White *vs.* Graves, 107 Mass. 325; a *bona fide* purchaser being protected even in case of fraud. Hall *vs.* Pattison, 51 Penn. St. 289. We should say this statement is somewhat too broad. An officer cannot bind by his certificate a party who has never appeared before him at all. See Barnet *vs.* Barnet, 15 Serg. & R. 72; Michener *vs.* Cavender, 38 Penn. St. 334; Watson *vs.* Thurber, 11 Mich. 457; Fisher *vs.* Meister, 24 Mich. 447; and it may always be shown that at the time he had by law no authority to perform the act. Eaton *vs.* Woydt, 32 Wis. 277. But unquestionably a very clear case must be made out before the certificate can be set aside. Hourtienne *vs.* Schnoor, 33 Mich. 274; and the party's own evidence is not sufficient for this purpose. Lickmon *vs.* Harding, 65 Ill. 505. A party may also be estopped by knowingly permitting a false certificate to be acted upon by a purchaser. Norton *vs.* Nichols, 35 Mich. 148; McNeeley *vs.* Rucker, 6 Blachf. 391. See further, for the general principle, Swift *vs.* Castle, 23 Ill. 242; Eyster *vs.* Hatheway, 50 Ill. 521. These cases, when examined, will illustrate the heedlessness with which certificates of acknowledgment are given. The requirement in some states that a married woman should be examined separate and apart from her husband, and the contents of the deed be made known to her, was one which many acknowledging officers seldom obeyed in its spirit.

any one may have this important official authority who feels disposed to ask for it; and that ignorant men, and men notoriously untrustworthy do often possess it. One reason why this is so is that the statutes have been framed with a view to make the transmission of title to lands easy, cheap, and simple, so that land may be dealt in with the same facility as horses, or any species of personalty. But another reason is that a great number of officers, elected or appointed for other purposes, have had the power to certify the acknowledgment of deeds added to their other functions, as if it were a secondary and unimportant matter. This fact is especially prominent in the states of the west.

To a proper appreciation of the resulting evils, it is necessary that some of the statutory provisions be given; and those of Wisconsin are selected, not because they are worst;* but because they are fairly representative of provisions existing generally, and will serve as well as any to indicate the defects in the general American system.

1. If we look in these statutes to see who may certify to the execution of conveyances, we are struck at once with the enormous number. Any judge or clerk of a court of record, court commissioner, county clerk, notary public, or justice of the peace may perform this important ceremony. The people of Wisconsin framed their institutions under the conviction that it was of primary importance that cheap justice be brought to every man's door; and they therefore provided for four courts in every town, to be held by as many justices of the peace. These are chosen by the electors of the towns, and the number is the same where the electors are few as where they are numerous. It is estimated that there are in the state, in all, not less than 4,800. Notaries public are appointed by the governor. They are state officers, and perhaps in providing for them it was supposed the number would be small, but it is not

* They are in substance the same as those of Michigan, and in some particulars better than those of some other states.

limited by the constitution or the statutes, and, in fact, nearly every person receives the appointment who desires it. Lawyers obtain it for themselves or their clerks, for convenience in executing papers and administering oaths, and the office is so common that many persons perform the official duties without expecting to demand or be offered the official fees. The whole number of notaries in the state is about 4,000. Leaving the other enumerated officers out of view, there are, therefore, in the state 8,800 justices and notaries, whose certificate to the execution of a deed or mortgage entitles it to go upon record. That is equivalent to saying, as we shall show further on, that there are in the State of Wisconsin 8,800 persons whose mere certificate, executed according to certain forms, may deprive any man in the state of his homestead or other real property.

If these men were all selected for this important service for their integrity, there might be a reasonable feeling of reliance on it being performed honestly; but the exact fact is that they select themselves. Unless the executive of Wisconsin is more particular than those of most western states, he seldom refuses the request for a notary's commission.*

And it is notorious that in most towns any man may be a justice of the peace who can succeed in manipulating, in his own interest, the town caucus of the party in majority. To suppose that there are not, in this vast number of officers, many who would not scruple to certify to a false deed if they believed they could do so with impunity, is to put a faith in human nature which experience does not justify. Nothing is easier, and nothing is safer; and we have no right to be surprised when we find unscrupulous sharpers resorting to fraudulent dealings in land, in full confidence that they are less exposed to risks than by the better known frauds and robberies.

* Instances might be here mentioned of attorneys disbarred for dishonesty, who nevertheless were permitted to hold the office of notary public, and the fact attracted no particular attention; the office being generally looked upon as unimportant.

2. But having provided for this great number of certifying officers, the law has made no provisions whatever for insuring the intelligent and honest discharge of their duty. When the executed deed imports verity, the most natural shape for fraud to assume would perhaps be that of false personation; and this is one which requires to be guarded against with great care. It may safely be assumed that the large majority of all justices and notaries are men of integrity; but the most honest men are frequently unsuspicious and credulous to the last degree, and never look for fraud or deception from others until they actually experience it. It is therefore of great importance that the law should make careful provisions for putting them upon their guard, and should either forbid their taking the acknowledgments of persons they do not know, or should require them to take evidence of identity from those they are acquainted with, and make some record of the evidence which may be resorted to in case of alleged fraud. But the law makes no such provision. The statute does indeed give a form of certificate, in which it is recited that the persons executing the deed are known to the certifying officer, and it provides that the certificate shall be sufficient if "substantially" in that form. But we are not aware that it has ever been held that the absence of such a recital would render the certificate ineffectual; and if the certificate must always contain it, the recital is an idle form, for it is never understood that the authority to take acknowledgments is limited to the cases of those the officer is personally acquainted with. The authority is general, but as the certificate covers the identity of the party, it is assumed that the officer will satisfy himself on that point before certifying. But how shall he satisfy himself? Shall he take the word of the party himself as sufficient? If so, the inquiry is idle, for the offer of the deed for certification is an assertion of identity. Or shall he accept the statement of any other person who may be brought to him as a witness, whether known or unknown? If so, all that is needed is that the fraudulent

grantor shall have a confederate to vouch for him, or be able to find some one sufficiently credulous to accept and repeat his statement, that he is the person he represents himself to be.*

But the truth is, that so unimportant and so much a matter of mere form is the certificate of acknowledgment supposed to be, that most officers certify without doubt or question for any one who presents a conveyance for the purpose; so that if any one in this assembly were to go as an entire stranger into the office of a justice or notary in Wisconsin, and offer to acknowledge the execution of a deed, the probabilities are that the acknowledgment would be taken without question, and that the officer would certify according to the form given in the statute that the grantor was personally known to him. A fraudulent personation, therefore, requires no assistance from the officer, except that degree of carelessness which with many is habitual. No doubt there are a great many officers who duly appreciate the importance of their functions, and are careful to certify to nothing they do not know; but there are enough of a different sort to render false personation easy and safe.

3. Deeds of land in Wisconsin are recorded in the county within whose limits the lands lie, and the recorder must place none upon record unless it appears to be executed in compliance with the statutory provisions. His recording a deed is therefore equivalent to a decision by him that the certificate comes from the proper source, and he is supposed to satisfy himself of this fact. Now the means he has of doing this is an inspection of the instrument; the law provides for no other.

Some of the officers mentioned in the statutes have official seals, and it is presumed their certificates will be given under them, and that the recorder will be acquainted with the seals. The signatures of some it is presumed will be generally known;

* An introduction of the party to the officer by some one the officer knows is held sufficient. Nippel *vs.* Hammond, 4 Colorado, 211. Doe may therefore introduce himself to Roe, and procure Roe to introduce him to Jackson, the officer.

as, for example, those of the justices of the Supreme Court. But justices of the peace have no official seal, and notaries public may have none; and while the recorder may know the handwriting of some of these officers, it is not likely that he will know so well that of any great number as to be able to distinguish between the genuine signature and a clever imitation. Of course no assumption could be more wild and absurd than that the recorder knows the handwriting of every justice and notary in the state, and is able on an inspection of a signature to distinguish immediately between the genuine and the false. Indeed, he has no means of even knowing who all the justices and notaries of the state are. And yet the law not only requires him to take official notice who they all are, and official notice of the genuine handwriting of them all, but it gives a peculiar force to his decisions upon these points; so that his acting upon his supposed knowledge—which in fact he does not and cannot possess—imparts record verity to the instrument acted upon. It is thought sometimes to be a hard rule which requires every man, at his peril, to know the law; but what shall we say of the amazing assumption that the recorder of deeds knows all the acknowledging officers of the state, and can recognize the genuine signatures of all?

The system is a direct and very tempting invitation to fraud and forgery. Any man with average facility in handling a pen may put upon record an apparently good title under it. If all he cares for is to obtain in himself or in some confederate a title which he can dispose of, he need not trouble himself to see that the name he puts to the certificate of acknowledgment is that of an actual officer, for that will be assumed by the recorder and by a purchaser. But if he desires to obtain a record title that will stand the test of litigation, the name of a real justice or notary will be employed, so that the record may not be defeated by the evidence that there is no such acknowledging officer as the deed assumes. A sharp rogue will make use of the name of some officer who transacts a large business, because such a person, if his supposed act was called in question,

would seldom be able to testify whether he did or did not take the acknowledgment of any particular conveyance. It will be easy to inquire out such officers who notoriously perform the official act in the most careless and perfunctory manner.

Of what real value, then, can be the certificate of a justice or notary that a conveyance has been duly acknowledged before him by the grantor named therein? The moral force of such a certificate is absolutely nothing, unless we happen to know the officer to be a man uncommonly conscientious and careful, or unless we have reason to believe that the grantor was personally known to him. Imagine a statute passed which should require bank checks and drafts, and their endorsement, to be thus acknowledged. What prudent banker would deem it safe to receive the certificates without question, as recorders now receive the certificates to conveyances? And how long would he escape bankruptcy if he were to do so? And would not any prudent man say, without hesitation, that the act of paying a draft in reliance upon the certificate of an unknown person, who might either be dishonest and the confederate of a forger, or so credulous as to be the ready tool of a forger, would be one of such gross and inexcusable carelessness that, if it were habitual, it ought to deprive him of the confidence of the public in his business capacity? But the want of prudence would become absolute recklessness if, without the means of determining whether the certificate itself was genuine or forged, he nevertheless acted in reliance upon it.

Observation of the working of registration laws for many years has satisfied us that the requirement of an acknowledgment of conveyances under such laws is no security to titles whatever, and that the community would scarcely be more exposed to frauds if every grantor was at liberty to execute and record his conveyance without any such ceremony. Such security as there is must be found now, first, in the laws for the punishment of forgery, and second, in the difficulty of disposing of a false title without leaving tracks by which the perpetrators may be traced. But the laws against forgery would

be equally available then as now, and the benefit in requiring an acknowledgment is in the main limited to the fact that a person must be named as acknowledging officer, who, if he acted as such, can presumably give important evidence when the deed is a fraud. But any reliance upon such evidence must fail whenever an officer, from the multiplicity of his transactions, would fail to remember whether a particular transaction did or did not take place. And if the fact of fraud can be put beyond the reach of evidence by the destruction of deeds, as in many cases it can be, the difficulty in dealing with the title will disappear altogether.

The facilities for the manufacture of false titles are increased by the provision that deeds not acknowledged by the grantor may be proved before an acknowledging officer and certified by him for record on such proof. The statute does not require the proofs to be certified, and it is judicially determined that a certificate of a justice that the deed was proved to his satisfaction is sufficient.*

Like facilities are afforded for the manufacture of false titles out of the state. A notary public anywhere in the civilized world may take the acknowledgment of a deed of lands in Wisconsin, and his official seal sufficiently authenticates his signature. Thus the statutes of Wisconsin place the titles of its people at the mercy of this class of officers the world over. If they are dishonest, they may purposely take away titles by false certificates; if they are merely careless in the performance of official duties, they may heedlessly permit others to obtain false certificates from them. It almost seems as if the laws of the state were intended to invite unscrupulous persons of every land to come forward and steal the lands of her citizens.

But it may be said and believed that there can seldom be danger that a manufactured title will escape detection. The supposed grantor will always know when a deed is fraudulent or forged, and he may testify in his own protection. The law

* Myrick *vs.* McMillan, 13 Wis. 188.

also requires two witnesses to every conveyance; so that, with the acknowledging officer—unless all these are fictitious—there must always be three persons who knew of the transaction if it was real, or who presumably might testify to the fraud if the deed was forged. The deed itself, also, unless in cases of remarkably successful imitations, must, from the number of signatures upon it, afford abundant opportunity for detection.

This reasoning would be sound if a fraudulent deed was likely to be kept and produced in evidence; but it is not. The same statute that invites parties to commit frauds, takes care to provide the means whereby they may escape detection. It therefore provides that when conveyances have been acknowledged or proved and recorded, "the record, or transcript of the record, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this state, without further proof thereof." Thus the record, or a transcript of the record, is made original evidence. With such a law in force, the manufacturer of a fraudulent title, or any one claiming under it with knowledge of the facts, will no more keep the false papers where they may be discovered and given in evidence against him, with their forgeries upon their face, than a murderer would keep by him the instruments of his crime, with all their marks and stains. All he needs is the record, and the false story which that will tell will wear the bold face of truth, when the original itself would not for a moment stand the test of inspection.

Let us see, then, how successive falsehoods may become verities under the recording laws. A false assertion from an unknown person obtains a false certificate from a notary; the false certificate secures from the recorder the record of a forged deed, which the record then affirms to be genuine, and this false affirmation is then received as true in all courts, "without further proof thereof." Or a forger presents to the recorder a conveyance, wholly manufactured by himself, and the recorder, by putting it upon record without investigation or inquiry, makes it testify to all the world that it is a genuine instrument,

and was executed by and in the presence of the persons whose names appear upon it. It is true that the statute provides that "the effect of such evidence may be rebutted by other competent testimony," but the effect nevertheless is that the forgery proves its own verity, and the owner of the land must lose his title, if he cannot disprove it. And in entering upon the proof of a negative, he will do so under the disadvantage that he must meet and overcome by parol evidence the record of a formal document, which is officially certified to have been executed and acknowledged by him in the presence of witnesses.*

But one proposing to manufacture fraudulent deeds will not do so recklessly, but will cunningly look about for cases in which, when the deeds are recorded, it will in his opinion be practically impossible to overcome the evidence of verity which the record gives. The death of a land owner often affords opportunity to manufacture a conveyance with impunity. If he has attended to his ordinary affairs until shortly before his death, a deed dated during that period may excite no suspicion, and with the assistance of a dishonest notary, or one careless enough to permit of a personation, it may easily be prepared. If a notary or justice, who might have been likely to be called upon by the owner of the land, should chance to die near the same time, this would afford an excellent opportunity for the use of his official signature with impunity, and the manufacturer of the deed might do everything essential to complete the work without any assistance whatever. If the owner of the land should be stricken with incurable mental disease, the opportunity to rob his estate of his lands would be the same that would be presented by his death. It is not so common to record deeds promptly on their execution, that the fact that a short time, or even some months, intervenes between the date of the deed and of the record will excite suspicion, and it is only necessary that,

*A certificate of acknowledgment is not invalidated by the fact that the grantor or the acknowledging officer does not recollect the transaction. Tooker *vs.* Sloan, 30 N. J. Eq. 394. See Sisters, etc., *vs.* Catholic Bishop, 86 Ill. 171.

after the record is made, the parties concerned should be able to give some plausible account of the loss or destruction of the deed, and the fraud is accomplished. A plausible story is easily made up if some little time elapses before the deed comes to the knowledge of the real owner. In fact, it is notorious that very little care is taken by large numbers of people to preserve their title deeds after they have been recorded, and any one who has had occasion, because of trouble with the records, to look up original conveyances, knows perfectly well that while grantors, after parting with their title, often take no pains to preserve old deeds, which now seem worthless to them, grantees are quite as likely not to take pains to obtain and keep them. The loss of old deeds is therefore not an unusual, but a very common occurrence.

In looking for land to appropriate, the land robber will be likely to come across cases in which, on the death of the owner, it is manifest the knowledge of his ownership has not immediately been brought home to the heirs. Such instances generally happen in the case of non-residents. A large proportion of the community never make inventory of their property, and if they attend in person to their own affairs, they may have lands abroad of which their families have but faint information, and sometimes none at all. Very many of the tax titles in the western states originate in the fact that for a time after the death of the owner the lands are not looked after, either for lack of information on the part of those interested, or because the family are infants and women, and their affairs pass to the hands of some one who was a stranger to the business of the ancestor, and only slowly possesses himself of a knowledge of the facts. During this period there is opportunity for a fraudulent harvest, and when the representatives of the deceased at last inquire out the lands, they find that apparently the ancestor disposed of them in his lifetime, and the inquiry goes no further.

The parties who engage in such frauds usually profess to be real estate brokers or abstract makers, and their business

affords them the opportunity to know what cases it is safe to deal with. To carry on frauds on a large scale, confederates are required, and several transfers may be desirable. And the fraudulent dealings will by no means be confined to the cases of death or disability of the owner. Those are generally the safer cases; but many non-resident owners of land in the western states have never visited them, and if false deeds were placed upon record, only a fortunate accident would be likely to acquaint them with the fact.

Fraudulent deeds are sometimes obtained by a species of false personation, which all parties concerned appear to think may be indulged in without danger. For example, Mr. William Jones, of Wisconsin, many years since purchased of the United States a certain quarter section of land, and there is no conveyance of it by him of record. Another Mr. William Jones, of Milwaukee, receives a letter from a land agent, enclosing ten dollars and a quit claim of this land, which he is requested to execute. He does not perceive what good the quit claim can do any one; but, confident it cannot hurt him to consent, he gives the conveyance and accepts the money. Now the deed of quit claim in common use in the western states is really a deed of bargain and sale, and just as effectual in transferring the title as the common deed with covenants. And in several states it has been decided that no suspicion attaches to a title by reason of its having been transferred by a quit claim.* The land agent, therefore, soon disposes of the land to a *bona fide* purchaser, whose title is apparently good and may never be disproved.

One other fraud, of which cases have come before the courts, may be mentioned. Very generally in this country it is now provided that a homestead shall only be conveyed by the joint

* See McConnell *vs.* Reed, 4 Scam. 117; Butterfield *vs.* Smith, 11 Ill. 485; Pettingill *vs.* Devin, 35 Iowa, 344; Burns *vs.* Berry, 42 Mich. 176; Morris *vs.* Daniels, 35 Ohio (N. S.), 406; Taylor *vs.* Harrison, 47 Texas, 454. But see also Marshall *vs.* Roberts, 18 Minn. 405; Hutchinson *vs.* Harttmann, 15 Kan. 133.

deed of husband and wife. A husband, whose wife by his misconduct has been driven from his home, has been known to procure an abandoned woman to personate her for the purposes of this conveyance; and when, after the husband's death, she attempted to claim homestead rights, this deed, certified in due form by a public officer to have been executed by herself, confronted her. In case she had died before the husband, and the minor children had claimed the homestead, the fraud would have been likely to be completely effectual.

We have said that unoccupied lands will generally be selected for fraudulent conveyances, because the probabilities of concealing the fraud will be greater. But it should be observed that even in the case of occupied lands, the difficulty of protecting against fraud is increased by the recording laws. One or two illustrations of this fact will be given. The statutes of Massachusetts provide that unrecorded conveyances shall be valid only as against the grantor, his heirs and devisees, and other persons having *actual notice* thereof; and it is judicially determined that possession of lands by an owner whose deed is unrecorded is not actual notice of his deed, and he is consequently liable to be disseized under a subsequent deed from his grantor.* It has also been held in many cases that possession of lands is no notice of a claim to title or equities against the possessor's own conveyance;† so that a fraudulent deed, which the record makes *prima facie* genuine, may take from the real owner all the protection which possession is supposed to give. And though possibly the case never occurred of the owner being disseized under the record of a forged conveyance purport-

* Pomroy *vs.* Stevens, 11 Met. 244; Parker *vs.* Osgood, 3 Allen, 487; Dooley *vs.* Walcott, 4 Allen, 400; George *vs.* Kent, 7 Allen, 16; Sibley *vs.* Leffingwell, 8 Allen, 584; Mara *vs.* Pierce, 9 Gray, 306; Lamb *vs.* Pierce, 113 Mass. 72. Compare Vaughan *vs.* Tracy, 22 Mo. 415, and 25 Mo. 318; Rhodes *vs.* Outcalt, 43 Mo. 367; Harris *vs.* Arnold, 1 R. I. 126.

† That possession is not notice of equities as against a man's own conveyance, see Williamson *vs.* Brown, 15 N. Y. 354; Fassett *vs.* Smith, 23 N. Y. 252; Bloomer *vs.* Henderson, 8 Mich. 395; Van Keuren *vs.* Central R. R. Co., 38 N. J. L. 165; Denton *vs.* White, 26 Wis. 679.

ing to be his own, the same cannot be said of heirs. Death can be wonderfully efficient as an assistant to fraud when the recording laws kindly dispense with the production of original documents.

As our remarks have had special reference to the laws of Wisconsin, it is proper to say that in one particular they are much less subject to criticism than some others. We refer now to the provisions respecting the execution of deeds in other states. They may be acknowledged in other states before any justice of the peace; but the official character and signature of the justice must be authenticated by the certificate of the clerk of a court of record for the proper county, under his official seal. But in quite a number of the states no authentication whatever of the assumed official character or signature is required, but the recorder is supposed to know these officers and their handwriting the country over.

We shall, of course, not be understood as advancing the proposition that all fraudulent dealings in land titles are chargeable to the facilities afforded by the recording laws. We understand perfectly that there may be frauds and forgeries under any system. But what we affirm, and have sought to point out, is that the recording laws afford facilities for the perpetration of frauds that could not otherwise be committed, and that they aid in the concealment of frauds by inviting the destruction of documents that might expose them.

When we become accustomed to a system that, so far as we know, generally works well, and from which neither we nor any of our neighbors or friends have ever suffered, we are not likely to stop to investigate its possibilities, even when, if we were to consider it as a system only as yet proposed, we might reject it without delay or hesitation as fraught with manifest evils and dangers. Suppose it were now proposed that the certificate of any justice or notary in the country should be *prima facie* evidence of the due execution of a will, and that, on its being recorded, the record should be original evidence; would not the proposition excite amazement, and be rejected sponta-

neously as in the last degree dangerous? But the certificate of an unknown justice or notary, or of some other unknown person who may falsely assume the officer's name and title, ought no more to authenticate one instrument than another. There is no more to be attested in the case of a will than of a deed. Identity, legal capacity, and freedom of action are all covered by the certificate of acknowledgment, and these are all that a subscribing witness to a will is expected to observe or testify to.

Are there available remedies for these evils? We reply without hesitation in the affirmative. These may be either partial or thorough, and they may be found either in a modification of the existing system of registration, or in the substitution of a better and safer one.

1. A partial remedy would be found in the repeal of all provisions of law which make the record, as we now have it, primary evidence of the genuineness and due execution of a conveyance, and the substitution of others which make it secondary evidence only. This would make it for the interest of every land owner to preserve his title deeds, and of every purchaser to obtain and keep the deeds which are to constitute his muniments of title. Exceptions might be made in favor of recorded instruments under which possession has been held for a time; say for five years; but the general rule ought to be, that the record shall be evidence only after it has been proved that there was a genuine instrument whose non-production is satisfactorily accounted for.*

It would be interesting, if it were practicable, to trace in each state the history of its recording laws, and to ascertain how it was that such force came to be given by law to these records. The real reason is probably to be found in the fact

* In nearly all the states the records are now original evidence. In a few they are evidence only after the party offering them has made affidavit or presented evidence that the original has been lost or destroyed, or is not in his custody or control.

that the early conveyances in colonial times took place with the approval and consent of the government, and were made a matter of solemn record as much as were the laws or the judgments of its courts. Thus, in Rhode Island, the "transfers were made in open town meeting, and if the town approved the sale, they voted to record the deed, which made the conveyance valid; but if they disapproved, the whole was void." * There could be no danger of fraud in making such a record evidence. The Body of Liberties for Massachusetts provided for the recording in the public rolls of the general court of any deed "duly confirmed," and the confirmation might extend to the conveyance or alienation by "any woman that is married, any child under age, idiot, or distracted person," "if passed or ratified by the consent of a general court." † The faith properly due to such records was afterwards transferred without reflection or care to those of another kind which it should have been seen were entitled to little or no confidence.

2. The proposed change will take away some of the temptations to the manufacture of false deeds and their destruction after a false record has been made, but a much more effectual protection will be a requirement that the original deed shall, in every case, be left in the office of registration. This we regard as absolutely indispensable. There can be no effectual security to land titles without it.

For this purpose it should be required, either that all conveyances, mortgages, etc., be executed in duplicate, and the two be presented to the recorder, and one retained by him while the other is returned, with the date of record endorsed; or, if not executed in duplicate, that the recorder, while retaining the original, should deliver back a true copy to the party leaving it. This would give to parties all the security they now have against the loss of evidence by the accidental destruction of the records; a calamity that once occurred in Chicago, and has happened to many counties in different parts of the Union.

* 1 Arnold, Hist. of R. I., p. 120.

† Body of Liberties, 14, 28.

The deeds so left with the recorder might be made the record by being bound up in books for the purpose; but their liability to wear out in use, and to be fraudulently cut out or defaced would constitute a serious objection. A record for customary use ought, therefore, to be made by copying them into a book, and this book could be indexed and the conveyances abstracted for the purpose of giving certificates of title, as is done now. This system would give a very perfect record, and the original conveyances would always be accessible for the purpose of detecting and preventing fraud or forgery, if any was perpetrated or attempted.

What reasonable objection can there be to this? We can conceive of none, except the slight additional cost of making duplicate conveyances, or of certifying a copy of the original. This is a mere trifle, when the risks to which land owners are now exposed are considered. The proprietor might, with equal reason, object to the cost of a key to lock his door against burglars. Indeed, the protections of the present system of registration, if it is to be retained, might with almost equal reason be made protections against burglary, and we might leave our dwellings without other security than a certificate of a justice or notary that he had examined the caskets containing jewels and plate, and found them burglar proof. The average officer would probably give the certificate with as little hesitation and as little knowledge as he now gives certificates of acknowledgment.

The cost of the proposed system might be somewhat lessened by entering only an abstract of the conveyances in the record books, instead of a full copy; but this would be objectionable, because it would be likely to render necessary frequent reference to the original, and subject it to undesirable wear and risk of injury.

There are two subordinate advantages of the proposed system which are of no small value, and deserve to be mentioned.

The first is, that it gives protection against errors in recording. These are very numerous, especially in the new states, where

for a considerable time business is likely to be done loosely. It is astonishing sometimes to see how carelessly the records are made, and how illegibly they are sometimes written. We have ourselves often examined records where it was nearly or quite impossible to determine whether certain characters were intended for "north" or "south," or certain others for "east" or "west," and yet upon these the whole description depended. Registers of deeds, we may as well remember, are not chosen for their handwriting, or because of fitness for the particular office, but for circumstances or qualities which render them important to the general party success. Moreover the litigation that arises respecting mistakes is sufficient to prove that in many cases the copy in the record book is never compared with the original.

The second subordinate advantage is, that it gives additional protection against the theft or destruction of records. As there would seldom be occasion to refer to the originals, it is presumed they would be kept in secure vaults, as much protected as possible against ordinary dangers. Instances have occurred of the stealing of the record books of a county in order to the obtaining of reward for their re-delivery; just as tombs have sometimes been robbed for the same purpose; but with this difference, that while the body may wisely be left with the thieves, the records must be had back for the protection of the living. It is indeed possible that both record and original may be stolen or tampered with, but the difficulties will be greatly increased.

Will the proposed system be the best that can be devised? We think not; but it will be the best that any American state would now assent to. The best system would be one under which each successive conveyance should represent an actual and undoubted title, subject only to such mortgages or other liens, leases, etc., as would be noted thereon. Something of this nature is now in force in the British colonies of the Southern Hemisphere. And at the time when land titles are first being acquired, it might easily be established. Where land titles are

complicated and confused, as ours now are, it could only be established on a judicial investigation of titles which are questioned, or on some provision which should require a title claimed of record to be contested by judicial proceedings within a short time named, or it should stand confirmed. To sketch the details now of a plan would be idle, for at present the public would not even listen to it with patience. Inherently, however, there should be no more difficulty in such a registration than there is in a similar registration of ships, and when once adopted, purchases and sales can safely be made by it without the risks now attending reliance upon abstracts.

The plan now actually proposed is substantially that of some of the British colonies, and it could be easily adopted in the states without confusion. At the same time, the great number of acknowledging officers ought to be reduced, and some minor changes made; but with the original conveyances preserved, such matters would not be of great importance. If something of the sort is not soon done, it will be because the people do not fully understand and appreciate the dangers to which their titles are now exposed. These dangers are increasing from year to year as the criminal classes come to understand more generally the feast to which they are invited by the deceptive "protections" of the recording laws.

PAPER

READ BY

SAMUEL WAGNER.

The Advantages of a National Bankrupt Law.

In considering the advantages to be derived, in our own country, and at the present time, from a national bankrupt law, it may be well, at the outset, to glance for a moment at the history of such legislation, with a view of ascertaining the principles upon which it rests, apart from the peculiar conditions which, in different countries, and at various epochs, may have given rise to it.

Undoubtedly, in the *cessio bonorum* of the civil law, as perfected by the Christian Emperors, we can recognize the germ of all subsequent legislation on the subject. We find here a law based upon the principles of humanity and justice, that honest creditors are entitled to an equitable distribution among themselves of their debtor's estate, and that the honest debtor who delivers up all that he has to be so distributed, shall not be dragged to jail as a criminal. "*Cum eo quoque, qui creditoribus suis bonis cessit, si postea aliquid acquisierit, quod idoneum emolumentum habeat, ex integro in id, quod facere potest, creditores experiunter. Inhumanum enim erat, spoliatum fortunis suis, in solidum damnari.*"* Here, we may observe, there is no provision that, by surrendering his property to his creditors, the debtor shall be discharged wholly from his debts, but the spirit and intention is that he shall be allowed an opportunity to recover from his reverses, and to pay his creditors in full.

* Just. Ins., Lib. IV., Tit. VI. Sec. 40.

In England, we find the course of legislation on this subject of peculiar interest and value in the elucidation of the principles underlying this question. At first, and for a long time, while the nation was gradually developing its system of laws, the bankrupt was considered merely in the light of a criminal, whose crime could be expiated only by paying all his debts. In time, however, the principles upon which the Roman law had been based were accepted as the true guide to legislation, and there was added, also, the recognition of another principle, the importance of which was pressing itself upon a people already growing great in trade and commerce, that the interests of trade imperatively demanded a recognition of the rights, and a fair consideration of the claims, of both debtor and creditor. So that, in its completed form, the legislation of England on this subject presents to us the results of a continued and determined effort to reach a bankrupt law which should come up to what Mr. Justice Story has suggested as perhaps the most satisfactory definition to be found: "a law for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts." It would be extremely interesting, should time permit, to look more closely into the various and gradual stages of this English legislation, but we can only pause to note one very important lesson to be gathered from it, which is of as much importance now as then, in framing a bankrupt law, and that is that the "*machinery*," as it may be called, for administering such laws is everything. In the first Act of Parliament which may properly be called a bankrupt law, that of 34 and 35 Hen. VIII., c. 4, no provision was made for the machinery for carrying out its enactments. It simply provided that "the Chancellor should take order in the matter," etc. Consequently, this first bankrupt act proved to be of very little practical value. But, by the subsequent act of 13 Eliz., c. 7, which embodied the results of the knowledge and experience of the great lawyers of that day, we find the administration of the law entrusted almost entirely to the creditors themselves, the

judicial tribunals being resorted to only to settle disputed questions. And just here let me quote from the language of Lord Coke in the first adjudicated case in bankruptcy under the statute of 13 Elizabeth,* as it may fairly be considered as an exposition by that great lawyer of the true scope and purpose of a bankrupt law: "So that the intent of the makers of this act, expressed in plain words, was to relieve the creditors of the bankrupt equally, and that there should be an equal and ratable proportion observed in the distribution of the bankrupt's goods among his creditors, having regard to the quantity of their several debts; so that one should not prevent the other, but all should be *in æquali jure.* And so, in divers cases, as well at the common law as upon like statutes, such constructions have been made, and in cases at the common law equality is required; so here there ought to be an equal distribution, *secundum quantitatem debitorum suorum;* but if, after the debtor becomes a bankrupt, he may prefer one (who peradventure hath least need), and defeat and defraud many other poor men of their true debts, it would be unequal and unconscionable, and a great defect of the law, if, after he hath utterly discredited himself by becoming a bankrupt, the law should credit him to make distribution of his goods to whom he pleased, being a bankrupt man of no credit."

This law, as thus expounded at the time by Lord Coke, has been the law of England ever since. It has been amplified and improved in various ways, for its more perfect administration, but has never been changed in its essential features. England has grown and prospered, until she has become the first nation of the world in trade and commerce, and yet it has never occurred to her lawyers or her statesmen that her system of bankrupt laws is other than one made for all time, based upon sound principles of justice and humanity, and necessary for the proper regulation of her trade and commerce.

In our own country, the framers of our Constitution, having before them this record of England's legislation, named among

* The "Case of Bankrupts," 2 Coke's Rep. 24.

the powers of Congress that of establishing uniform laws on the subject of bankruptcies throughout the United States, and, moreover, they placed this power side by side with that of regulating commerce among the several states. Now, all these enumerated powers of Congress, as has been well said by William Rawle, in his commentary on the Constitution, will be found "to relate to, and be consistent with, the main principle, the common defence and the general welfare." It can scarcely be doubted that the framers of the Constitution looked forward to the future of the nation, when, with the growth in population, the extension of the occupied territory and the consequent increase in the number of states, trade and commerce would no longer be restricted to particular localities, but would overstep all political limits; when the very necessities of the case would require that the product of the soil and of the mines, in sections either purely agricultural or exclusively abounding in mineral wealth, would be carried to distant points for consumption, for manufacture, or export, while the manufactured products would find their market over the whole length and breadth of a growing country. It is reasonable to suppose, therefore, that they considered this power to enact bankrupt laws one which, in the light of the history of other nations in the past, and the foreshadowing of the requirements of our own in the future, was necessary for the general welfare. Moreover, when we look to the writings of the best commentators on the Constitution, we find full confirmation of this view. The three great statesmen who have given us the full and exhaustive commentary found in the pages of the *Federalist*, seem to consider as unnecessary any argument in favor of a bankrupt law, and dispose of the whole subject in these few, but significant words: "The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different states, that the expediency of it seems not likely to be drawn in question." Mr. Justice Story, in his commentary on the Constitution, considers at great length the advantages to be derived

from a national bankrupt law, and the objections which have been urged against it; and, after stating that the evils existing for the want of legislation by Congress are incapable of being redressed by the States, and can be adequately redressed only by the power of the Union, he adds: "There is no commercial state in Europe which has not for a long period possessed a system of bankrupt or insolvent laws. England has had one for more than three centuries, and at no time have the Parliament or the people shown any intention to abandon the system. On the contrary, by recent Acts of Parliament, increased activity and extent have been given to the bankrupt and insolvent laws."

And yet, with all this light of past experience of other countries older than our own, and with all this discourse of "sound words" from our best lawyers and statesmen, what has been our action in the matter? A bankrupt law enacted in 1800, and repealed in 1801; another enacted in 1841, and repealed in 1843; and a third passed in 1867, and repealed in 1878. And, if we look at this legislation in the light of the conditions existing at the time, we find in each case that it was prompted by the thought that it would serve to remedy evils resulting from over-speculation, or from the disturbed condition of finances following a war; and it can hardly be claimed, therefore, that by these brief and spasmodic efforts at legislation we have been able to test the value of the ordinary and regular operation of a bankrupt law. The most that these three acts accomplished was, like so many sponges, to wipe off a vast amount of hopeless debts, and give everybody a clean slate with which to start fresh. The slates once cleaned, the laws were repealed. Practically, therefore, they amounted to little more than laws for the abolition of debt, of which we read in ancient history, but which we would scarcely think of incorporating into our modern systems of legislation. Moreover, a bankrupt law enacted at such a time, and under such a condition of things, will, in the very nature of the case, bring with it an early demand for its own repeal, for there is necessarily exhibited in its operation such an immense mass of debts due

from one speculator to another, representing little or no value, and such a hopeless discrepancy between assets and liabilities, that, naturally enough, a popular hue and cry is raised against the law itself, as causing all the mischief by encouraging speculation and fraudulent bankruptcy. It would seem that, in our legislation on this subject, we have not yet been able to get beyond the crude notion that a bankrupt law is a sort of collection of specifics, to be used from time to time for the cure of our financial disorders; the physic to be taken in a huge dose, and dispensed with as soon as the natural tone of the body is restored. But, unfortunately, we have found that these disorders increase in seriousness, that they attack us more frequently as we grow older, and that, under this heroic treatment, each attack is worse than the last. We ought, therefore, by this time, to be ready to appreciate the fact, which our own experience and the history of other nations should teach us to be true, that a system of national bankrupt laws, in its even and continuous operation, is rather in the nature of a regimen of diet and exercise to the body financial and commercial, in its very nature partly restrictive and partly remedial, and therefore tending to prevent rather than to cure disease.

Thus I have endeavored to present, very briefly, what seems to me to be the conclusive argument in favor of a national bankrupt law; that it is based upon principles of justice and humanity which have been recognized since the early days of the Christian era as necessary for the well-being and good order of society, and for the proper regulation of trade and commerce; that these principles have been acted upon continuously for centuries by the greatest commercial nations of Europe; that they have been distinctly recognized by the framers of our Constitution, and endorsed by its most eminent commentators; and that we have, in our own legislation, recognized their value and importance, even if we have failed to understand their proper application.

If this argument is sound, it is not necessary to consider the objection, so repeatedly urged, that while a bankrupt law is good in theory, it cannot be so framed that it will work well in

practice; for, if the theory is worth anything, it must rest upon some sound principle, from which we cannot depart without working injury to the country. So that, if the country really needs a bankrupt law, we should not fear the difficulties which may arise in framing it, or the inconveniences which will necessarily occur in its administration. "It is easy," says Mr. Story, "to exaggerate the abuse of the system, and point out its defects in glowing language, but the silent and potent influences of the system in its beneficial operations are apt to be overlooked, and are rarely sufficiently studied. What system of human legislation is not necessarily imperfect? Yet who would on that account destroy society?"

Nor need I dwell upon the proposition, that, if a uniform system of bankruptcy is necessary or desirable, such a system can only be established by national legislation, and that the same result cannot be accomplished by legislation in the several states. Apart from the fact that no state law can have any extra-territorial force, in ten only out of forty-six states and territories, so far as I have been able to learn, is a preference of one or more creditors over others forbidden; and it would be quite hopeless to attempt entire uniformity in this respect, if for no other reason than for that given us by Mr. Story, whose prophetic words, written in 1833, have met with a degree of fulfilment even in 1881. "There will always be found," he says, "in every state, a large mass of politicians who will deem it more safe to consult their own temporary interests and popularity by a narrow system of preferences, than to enlarge the boundaries, so as to give to distant creditors a fair share of the fortunes of a ruined debtor." *

But this subject is an eminently practical one, and it is important to consider it in its bearings upon the business interests of the country at the present time. There is no more satisfactory way of doing this than by examining, for a moment, the views of representatives of the mercantile interests of all parts

* Story on Const., Vol. II. Sec. 1107.

of the country expressed at a convention held at Washington, in January last, to urge upon the committee of the House of Representatives the imperative need of a national bankrupt law, and the passage of the bill which had been prepared by Judge Lowell, of Boston, and which had already been introduced into Congress. It may fairly be said that this convention represented the sentiments of the mercantile class of the whole country, for it contained well-chosen representatives from thirty-seven important mercantile bodies, from at least sixteen different states, extending over an area from Maine to Louisiana.

And just here let me say, in order to show the magnitude of the interests dependent upon the question which this convention had met to consider, that, from statistics I have been able to obtain from very reliable sources, it appears that during the years 1878, 1879, and 1880, and the first half of 1881—that is, from the present time back to and including the year in which our last bankrupt law was repealed—the number of failures in the United States and the territories has been 24,737, with liabilities amounting altogether to $439,230,830.

From the New York Chamber of Commerce came this brief but pointed resolution: "*Resolved*, That a national bankrupt act, for the distribution of the bankrupt's estate and for the discouragement of insolvency, will promote the general well-being by confirming confidence in business transactions, and greatly increase inter-state trade."

From the remarks of Mr. L. H. Gardiner, of New Orleans, I extract the following: "Speaking for the South and Southwest, I desire, as representing that section, to say that our people, both debtors and creditors, recognize the necessity for a national bankrupt law of equitable provisions, and alike just to the unfortunate debtor and the unfortunate creditor. Wide room is left, and an open door, for the unscrupulous debtor, who, with the apparition of disaster before him, makes haste to cover himself under the assignment laws of Mississippi, or the respite laws of Louisiana. This condition of affairs is deplored by all

fair-minded men of all classes of our Southern commercial community, and credit transactions, the basis of enterprise and expansion, always surrounded by more or less risk, are, and will continue to be, extra hazardous, until the equities between debtor and debtor, and debtor and creditor, can be established in advance by the provisions of a good national bankrupt law."

Mr. Gardner R. Colby, a delegate from the Merchants' Club of New York, said: "The gentlemen of the Merchants' Club represent sales on credit, long and short, to the amount of about $350,000,000 annually, with a capital to correspond. These gentlemen represent manufacturers in all manufacturing centres —Fall River, Connecticut, Lowell, Saco, Nashua, Rhode Island, Manchester, Lawrence, Biddeford, Worcester, and other cities, not including Philadelphia—representing a capital of about $250,000,000 more. * * * As far as my own experience goes, and the experience of the gentlemen who are also in the same business as I am, the dividends under the old bankrupt law, bad as they were, were from twenty-five to eighty-five cents on the dollar, according to the circumstances of the case, while under the state laws, during the past two years, the dividends have been virtually nothing."

The remarks of the Hon. J. H. Walker, of Worcester, Mass., delegate from the National Hide and Leather Association, contain some very thoughtful observations, which are of especial value, as they show, what has not been generally understood, that a national bankrupt law is of great practical benefit to the agricultural interests, and to the working classes of the country. "You will remember, gentlemen," said Mr. Walker, "that the boot and shoe interests of the country and the leather industry form the largest industry in the country except the agricultural, and represent hundreds of millions of dollars. * * * * You are fully aware that the prices of all articles are fixed by all merchants upon the principles upon which insurance risks are taken. Prices are made high or low with reference to two things—certainty of payment, and promptness of payment. Goods valued at billions of dollars are annually handled at a

profit scarcely more than the interest on their cost, for the time of payment of them is delayed. As the price at which each retailer supplies his country store, and at which he sells to the farmers and laborers, depends, first of all, upon the certainty of payment, and, secondly, upon the promptness of payment, allowing rascally traders to obtain goods and cheat the merchants out of their price, is allowing civilized brigandage, which, like all other brigandage, will certainly recoil, not alone on the merchants, who, as a class, are strong, and can, in the long run, protect themselves, but most of all upon the farmers, the mechanics, and the laborers, who, in the end, always pay the cost of the goods they consume, and also of bad legislation and the failure to secure good legislation. Let me illustrate the position the farmer is in by giving the history of one article produced by him, and which he must use again in another form. Take the hide which he gets from the animal that furnishes him his winter's beef, and which he must have again for his family in the form of boots and shoes. He sells it to the country store; the trader sends it, with other articles, to the general commission man in the city; he sells it to the hide dealer; he to the tanner; he to the currier; he to the boot and shoe manufacturer; he to the jobber; he to the country trader, who sells it in the form of boots and shoes back to the farmer. There is no man in the country that relatively has so large a pecuniary interest in the matter as the farmer; next the wage-workman, and, last of all, the merchant and manufacturer; for the final consumer, of all men, is most interested in all forms of cheap handling of all things, for he finally pays all the costs."

But, perhaps, of all that was said at that convention, there were few words of sounder wisdom or weightier import than those which fell from the lips of Mr. Frederick Fraley, of Philadelphia, President of the National Board of Trade, who, besides his clearness of view and soundness of judgment, brings to bear upon this question the experience of nearly three-quarters of a century of active life as a merchant, a legislator, and a public

man. "Whenever," he says, "we have not had a bankrupt law, we have been thrown upon the tender mercies of the state laws; we have already experienced the disadvantages under which the citizens of a state labored in their claims against citizens of other states, and I think the experience of all merchants will justify me in what I state, that, just in proportion as the number of states in the Union have multiplied, and the business ramifications of the country have been extended, these difficulties attending the settlement of assets of insolvents have multiplied in number and in extent, and in their disastrous consequences. * * * Those who have experienced any adversity in business, and in business which penetrates into different states and into different communities, well know the advantages of any uniform system. We have found by experience, that when we had a uniform system in regard to the currency, the people have been protected, and the measure of their prosperity has been increased; and so I think the experience of all merchants justifies the statement that under settlements obtained by means of a national bankrupt law, no more benefits have been secured to the creditor class of the community than have been secured to the debtor class of the community. Now, we are a homogeneous people. In the United States we have a great similarity of laws, and a great similarity of institutions; but still there are those shades of differences which have their influences, and to a great extent have to be respected, and hence, as a general principle, I think all will admit that no great commercial, manufacturing, or mining country, tied together as the states of this Union are tied together, can effectually prosper and maintain harmonious relations, so far as the debtor and creditor are concerned, without a national bankrupt law."

This remarkable *consensus* of those engaged in mercantile affairs throughout the country undoubtedly carries great weight; but, that we should not have before us only the testimony of those whose opinions may be based largely upon personal interests, let me supplement it by that of two of our greatest lawyers, Chancellor Kent and Daniel Webster, who may fairly

be taken as representative men, the one of sound judicial learning, and the other of a comprehensive grasp of legal principles in their application to national legislation. In deciding the case of Riggs *vs.* Murray, reported in 2 Johns., ch. 577, Chancellor Kent said: "As we have no bankrupt system, the right of an insolvent to select one creditor and to exclude another is applied in every case, and the consequences of such partial payments are extensively felt and deeply deplored. Creditors out of view, and who reside abroad or at a distance, are usually neglected. This checks confidence in dealing, and hurts the credit and character of the country."

Mr. Webster, in May, 1840, when the Act subsequently passed in 1841 was before the Senate, referring to the evils existing in the absence of a bankrupt law, said: "But the result is bad, every way. It is bad to the public and to the country, which loses the efforts and the industry of so many useful and capable citizens. It is bad to creditors, because there is no security against preferences, no principle of equality, and no encouragement for honest, fair, and seasonable assignments of effects. As to the debtor, however good his intentions or earnest his endeavors, it subdues his spirit, and degrades him in his own esteem; and if he attempts anything for the purpose of obtaining food and clothing for his family, he is driven to unworthy shifts and disguises, to the use of other people's names, to the adoption of the character of agent, and various other contrivances to keep the little earnings of the day from the reach of his creditors. Fathers act in the name of their sons, sons act in the name of their fathers—all constantly exposed to the greatest temptation to misrepresent facts, and to evade the law if creditors should strike. All this is evil—unmixed evil. And what is it all for? Of what benefit to anybody? Who likes it? Who wishes it? What class of creditors desire it? What consideration of public good demands it?"*

Thus I have endeavored to point out some reasons why we should have a bankrupt law, both by reason of the general

* Webster's Great Speeches (Little, Brown & Co., 1874), p. 473.

principles involved, and because a uniform law is necessary to overcome the practical difficulties now in the way of the proper development of our mercantile and commercial interests. Just now, it seems to me, this subject should receive the careful consideration of the lawyers of the country, for a Bankrupt Act is now before Congress, and it is certainly a matter of the utmost importance that no Act should be passed without first receiving the most careful scrutiny of men familiar with the legal principles involved, and competent to form an intelligent judgment as to the best methods of its administration. There is a vast amount of material, gathered from study and from actual professional experience, which only lawyers can supply and bring properly to bear upon the question; and, in view of the great diversity of our statute laws, and the almost infinite variety of business interests to be found over the vast extent of our country, it is particularly desirable that this scrutiny shall be exercised by those representing the views and interests of the different sections of the Union. Within a few weeks past, Senator Ingalls, chairman of the Senate committee which is considering this subject, during the recess of Congress, has invited a general expression of views; and I feel sure that a discussion of the question by this Association, representing, as it does, the Bar of the whole country, would lead to conclusions of very great value in the consideration of the subject at its present stage.

Philadelphia, August, 1881.

APPENDIX

TO THE

REPORT OF THE COMMITTEE ON LEGAL EDUCATION

AND ADMISSIONS TO THE BAR.

The following correspondence of the Committee on Legal Education and Admissions to the Bar was reported to the Association under the resolutions adopted at the annual meeting of 1879.

The letters received were in response to the circular letter printed below.

The space available for publication of the correspondence is necessarily limited.

As the statements regarding qualifications established by law for admissions to the bar in any one particular state are alike, in order to avoid repetition, a single letter only is printed where correspondents from the same state have confined themselves to the statements referred to.

Publication might in this way have been restrained to one letter from each state. But expressions of opinion as to the means for elevating the standard of legal education having been asked for, it is evident the plan indicated would be practicable only where letters from the same state are in accord. When this is not the case, and on careful reading there appears to be separation of judgment, letters which show it are themselves reproduced.

Letters which contain views of general interest everywhere are likewise printed, but merely prefatory and similar observations evidently irrelevant to the discussion are omitted from all the papers.

Under the plan for publication now enforced the Committee can do no more than acknowledge indebtedness for valued and enlightened communications duly on file for reference and received from the following gentlemen:

F. A. WILSON,	Maine.
NORMAN PAUL,	Vermont.
DANIEL ROBERTS,	Vermont.
H. E. YOUNG,	South Carolina.
P. O. THWEATT,	Arkansas.
JAMES S. PIRTLE,	Kentucky.
ASA IGLEHART,	Indiana.
A. W. HENDRICKS,	Indiana.
GEORGE G. WRIGHT,	Iowa.
CHARLES F. MANDERSON,	Nebraska.

CIRCULAR LETTER.

NEW ORLEANS, LA., *June 17, 1881.*

MY DEAR SIR:—Your attention is respectfully asked to the following resolutions, passed by the American Bar Association, at their annual meeting of last summer:

Resolved (*1*), That the Vice-President and Local Council for each state be requested to report to the Committee on Legal Education, the facts in regard to the qualifications existing by law for admission to the bar in such state, the means therein provided by public authority, or otherwise, for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualification for admission to the bar in such state, and the best means of accomplishing that object.

Resolved (*2*), That the said committee be directed to report such facts and suggestions as may be furnished by the several Vice-Presidents and Local Councils, pursuant to the first resolution, to the Association for its further consideration and action, with such suggestions as the committee choose to present.

In behalf of the Committee on Legal Education and Admissions to the Bar, it becomes my duty to request you to comply with the requirements of the first resolution at your earliest convenience. The committee are particularly desirous to have you give them the benefit of your valued opinions and views as to the best means of elevating the standard of qualifications for admission to the bar, and will be grateful to you as a conspicuous friend of learning and the law, if you will communicate with them through me in reply to this letter.

With great esteem and regard,

Very truly, yours,

CARLETON HUNT,
Chairman.

MAINE.

PORTLAND, MAINE, *June 30, 1881.*

CARLETON HUNT, ESQ.,
New Orleans, Louisiana.

DEAR SIR:—* * * * * * * * * *

After giving the following provisions of the laws of Maine:

CHAPTER 62.

An Act to regulate admission to the bar in this state. *Be it enacted, etc.*, as follows:

SECTION 1. No person who has not been a member of the bar of another state, in good standing and in active practise, for at least three years, shall be admitted to practise law in the courts of this state, unless he shall have studied for at least two years in the office of some attorney-at-law, or part of the time in such office, and the remainder in some law school, and shall also have passed a satisfactory examination in his legal studies.

SECT. 2. All examinations shall be public, and in the presence of some justice of the supreme judicial court during term time. The time for holding same in each county, not exceeding twice in each year, shall be fixed by the chief-justice. The examination shall be partly oral and partly written, and shall be conducted by an examining committee of the bar, in each county, to be appointed by the chief-justice. No candidate shall be admitted whose examination or character is not satisfactory to the presiding justice, nor unless notice of the intended application is given by the clerk of the court to which application is to be made, in some newspaper, for thirty days at least before such admission. All candidates must present to the examining committee, written recommendation from the members of the bar with whom they have studied, and must pay all fees now prescribed by law.

SECT. 3. Any person not having been admitted to practise law in this state, or whose name shall have been struck from the roll of attorneys, who shall advertise as, or represent himself to be, an attorney-at-law, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not more than three months: and no person whose name shall have been struck from the roll of attorneys for misconduct shall be allowed to plead or manage causes in court under a power of attorney for any other party, or be eligible for appointment as a trial justice, justice of the peace, or justice of the peace and quorum.

SECT. 4. All Acts and parts of Acts inconsistent with this are hereby repealed. [Ap. March 15, 1881.]

And stating that the law was procured under the prompting of a newly organized State Bar Association, but that Maine has no law school, this letter proceeds:

The history of the regulations for admissions of attorneys in this state is not one the profession is proud of, although the reproach does not rest upon lawyers. From the organization

of the state to 1843, the standard was high, and there was no inclination to lower it. But in 1843, under the impulse of prejudice against lawyers, diligently excited by a class of demagogues, the legislature swept away all existing rules, and enacted as follows: "Any citizen of this state, of good moral character, on application to the Supreme Court, shall be admitted to practise as an attorney in the judicial courts in this state." That statute continued, without modification, till 1859, when the sections I have already quoted from the Revised Statutes, were secured by the persistent efforts of the courts and the bar. Such abolition of requirement for professional duty operated less injuriously than might have been anticipated, simply because lawyers respecting themselves and their office, peremptorily refused to recognize as entitled to fellowship every one who availed himself of the statute privilege, without previous study. Besides, those gentlemen whose offices were principally resorted to by students, refused to receive any applicant who would not pledge himself to pursue a full course of study, and postpone application for admission until his instructor should be willing to give him a certificate of qualification.

Still it must be avowed that many incompetents took advantage of the statute, and for a time preyed upon the ignorant or unadvised portion of the community. They, however, soon found their proper level, and generally concluded that some other vocation was better suited to their strength. Yet the statute operated to induce men of straitened circumstances and impatient disposition, and especially those wanting in high ideal of the nature and dignity of professional pursuits and in any clear conception of the responsibility they were to meet, to shorten the time devoted to preparation, and to hurry, and more or less superficially to run through the work assigned by their teachers. This disposition to secure admission swiftly, though stayed, was not wholly cured by the legislation of 1859. We hope the results of the Act of 1881 will prove satisfactory.

As to the propriety of elevating the standard of qualification, our efforts, already detailed, is the best proof of our convictions, and those same efforts indicate what, in the judgment of the leading lawyers of this state, are the best means of accomplishing that object at present available.

Hon. Joshua L. Chamberlain, now President of Bowdoin College, has for several years striven to secure in that institution the establishment of a department for legal instruction. So far his efforts have been unsuccessful.

Very truly, yours,

NATHAN WEBB.

NEW HAMPSHIRE.

ANDOVER, N. H., *June 30, 1881.*

CARLETON HUNT, ESQ.

DEAR SIR:—Yours, dated June 17th, is at hand, and I hasten to reply.

1. We have no law school in this state, either in form or fact, and never have had. Those of our young men who attend any law school go to Cambridge, Boston, and Albany, and occasionally one goes to Ann Arbor, Michigan.

It is impossible to give you the statistics on this point. Speaking in general terms, I should say that twenty years ago not more than one out of ten admitted attended a law school, but the relative proportion has been steadily increasing. A large proportion of those admitted have been college graduates. At an early period few were admitted who had not received a collegiate education. The tendency has been steadily in the other direction, though of those admitted since August, 1878, under the new rules, probably one-half were graduates; but this, in my judgment, has been to a marked extent the result of the new rules and the weeding-out process.

2. With the exception hereinafter named, the admission in this state has always been controlled by the court.

You will find the general rules in the following vols. of N. H. Reports:—6 N. H. 580–1; 38 N. H. 588–9, 590; 56 N. H. 587.

I send you the latest rules, so that you may have them under your eye.

By examining the different volumes of reports and these rules, you will see the changes made in the practice from time to time.

Under the rules established at the December Term, 1833 (6 N. H. 580–1), three years' study was necessary for admission, if the candidate was a college graduate; but, if otherwise, five years was required. After practising with fidelity and ability for two years at the trial term, upon recommendation of the bar, he might be admitted to practise as an attorney and counsellor of the highest court of the state.

The bar of each county formed an association. They had a President and Secretary, and a Committee of Examination, usually consisting of three.

From 1800 to 1840 the bar was very able. Under the control of its great leaders the examinations were generally thorough, but they varied much in the different counties on account of the pressure of the business of the terms and the composition of the examining committees.

On June 29, 1838, the legislature amended the Act of 1791, and provided for admission to the highest court upon examination, if the court should be satisfied with his requirements and qualifications, and thereupon the person admitted should be allowed to practise before every court in the state.

In 1842 the Commissioners of Revision retained the substance of this statute; but by this time a great outcry had been raised against the profession. It was said that they were exclusive; that they did not represent the people; that the judges were lawyers, and that the court and bar conspired together to shut out the most deserving people in the state.

Whereupon the legislature overturned the report of the commissioners, and by section 2, chapter 177, Revised Statutes, provided that "any citizen of the age of twenty-one years, of good moral character, on application to the Superior Court, shall be admitted to practise as an attorney."

This became known as the "Moral Character" statute. The court construed it to mean that they had no right to inquire into the qualifications of candidates. Any one who could get two certificates of good moral character from persons known to the court, was entitled to admission as a matter of right. A few broken-down deputy sheriffs, and the like, took advantage of this statute. The regulars, while recognizing their rights to practise, regarded them as the black sheep of the profession, and never recognized their right to act as members of the bar at the bar meetings.

Bryant, whose case is reported in 24 N. H. 149 (4 Foster), was admitted under this statute. He had formerly been a deputy sheriff. The statute at that time exempted from attachment six sheep and fleeces of the same. Bryant had a writ in his hands against a person who owned but five sheep and their fleeces. The owner claimed them as exempt. Bryant admitted that they would be if he had six, but he convinced the owner that because he had only five the statute would not apply to his case, and so secured his booty and carried it off in triumph. Bryant was really the best type of this class of lawyers. When Chief-Justice Gilchrist denied the application to disbar him, because ignorance was no disqualification, he was very much gratified, and instantly arose and moved for costs; but whether against the court, the state, or the eminent public prosecutor, Sargent, since chief-justice, he did not state. The opinion of the chief-justice gave Mr. Bryant a most exalted opinion of its author. He was from that moment a steadfast and devoted advocate of him, and has frequently told me that that masterly opinion showed him how great and wise a judge Gilchrist was. By reading that part of the opinion on pp. 157–58, you will

get some amusement, and appreciate the point. Bryant was perfectly sincere in his encomiums, and I may add, got rich.

This class went by the name of "moral character" lawyers. It became a standing jest that they were so called because they had no character, either moral or otherwise.

A most outrageous case brought about the passage of the Act of July 3, 1872, by which the words "suitable qualifications" were inserted after the words "moral character." This gave the court the power to require examination as to the qualifications.

Candor requires me to add that this amendment was secured by the deft management of an eminent jurist, since chief-justice, and that the legislature probably would never have passed the Act if they had known what they were doing.

After this the old order of things was restored, but the leading members of the bar were too busy at the trial terms to give proper attention to the examinations. Candidates who had been rejected in one county would go to another and get admitted there.

The examinations in some counties were very rigid, and in others little less than a farce. Notwithstanding the three years' rule, candidates were admitted in some counties who had only loafed around some lawyer's office for from six months to a year. Some outrageous cases brought the whole matter to the attention of the full bench, and the result was what is known as the "new rules." Since then there has been a marked change, and for the better.

The Examining Committee is composed of men who stand very high in the profession. * * * *

Our Law Court meets for arguments on the first Tuesday of June and the first Tuesday of December, in each year, at the capital of the state. After the arguments in June it adjourns to some time in August, and from December to some time in March. The examinations and admissions take place at these adjourned terms. Those who are admitted, thereby have the right to practise in every court in the state.

This new departure was brought about to relieve us from great evils. It has driven the would-be professional tramps out of the state; it has raised the standard and elevated the tone of the profession. Occupying, as we do, the most advanced ground of any part of the Union, I have taken pains to communicate with one of the members of the committee, and herewith enclose you a copy of his communication to me which "needs no bush."

I think the details must be very interesting to you.

Very truly and fraternally, yours,

New Orleans, La. JOHN M. SHIRLEY.

CONCORD, N. H., *June 28, 1881.*

BRO. SHIRLEY:—I am very happy to give you the information you ask for in your letter of the 26th inst., about examinations for admission to the bar.

At the June Law Term, 1878, Bros. Carpenter, Hibbard, and I were appointed by the court a committee to examine candidates for admission to the bar at the Adjourned Law Term, to be holden in August. At the December Law Term, 1878, the same committee was reappointed for same purpose at the March Term; and at the June Law Term, 1879, the same committee was appointed; Carpenter to hold office for one year, Hibbard for two, and I for three years. Since then the incumbent has been reappointed at each June Term for the ensuing three years. You will see, therefore, by the system now in force, the committee now consists of three persons, each of whom goes out of office each year. The committee served without compensation till 1880. By an order of the court, made at June Term, 1880, the committee receive the following compensation, beginning with the year 1880: Those members not residing in Concord $40 each per year, and those residing in Concord $30 each. The only expense previous to this order was the cost of the printed questions—say $15 each year, and the cost of stationery at each examination—say $10 each year.

The examinations by this committee thus far have been both written and oral.

We have one set of questions for all candidates, requiring the personal history of the candidates, namely: Age, education, length of time engaged in study of law, books read, with whom studied, etc. Besides this, at each examination thus far six sets of printed questions have been used, each set consisting of ten to fifteen questions. The candidates have been allowed from one hour to an hour and a half to answer each set of questions—the length of time depending upon the number of the questions and their difficulty. These questions pertain to the leading branches of the common law, and are designed to test the candidates' knowledge of the leading principles of the law. They are based upon the text-books usually read by students—in other words, no question is asked that a student could not answer after a faithful, careful, and intelligent reading of the text-books usually placed in the hands of students. Their answers to these questions, of course, are in writing.

The oral examination immediately follows the written, and usually lasts from two to four hours, and covers some portions of the law not embraced in the written, and also questions of practice, etc. The committee also ask particular candidates questions suggested by the character of their written examination, to ascertain, if possible, whether the candidate has done himself justice in the written examination. In this examination the questions and answers are both oral. The object of the committee is to ascertain, so far as possible, the knowledge that the candidate has of the principles of the law. The entire examination usually lasts from four o'clock one day—including the evening of that day—until six o'clock of the next day.

Since the August Term, 1879, the committee have marked each candidate's examination upon a scale of which one hundred is the highest marking; and at the last March Term, with the approval of the court, they established a rule that "an average of less than seventy is not regarded as evidence of the qualifications required for admission." Prior to the August Term,

1879, the committee had no uniform system of marking, and prior to March Term, 1881, had not fixed a definite standard for admission. The changes were suggested by our experience. You will see that the whole system, as applied to legal examinations, was new, and we have developed it from time to time, as we saw occasion, and hope to improve it very much in the future. Each member of the committee now marks every written answer of every candidate—each member thus marking independently of his associates. They also mark the oral examination, but not so fully. These markings in the end are consolidated and averaged, a record is made thereof, and those having the required standard are recommended for admission. It is surprising how near alike the members of the committee mark the candidates. I shall be pleased to show you our record if you will call some time when in the city.

We have had some new sets of printed questions at each examination, excepting one. Thus far we have prepared twenty-one sets of printed questions in all. Those not prepared expressly for a particular examination are selected by the committee from those previously prepared. Generally, the same questions are not used at two succeeding examinations. When candidates have been previously examined, none of the questions used at the preceding examination are used at the succeeding one. Our record enables us to guard against this. The oral examination differs at each examination, according to the circumstances, etc.

The following shows the number examined, accepted, and rejected at each examination:

	Whole number.	Accepted.	Rejected.
August, 1878, - - -	8	7	1
March, 1879, - - -	17	12	5
August, 1879, - - -	9	6	3
March, 1880, - - -	14	11	3
September, 1880, - - -	11	8	3
March, 1881, - - -	10	5	5
	69	49	20

Thus far, two candidates have been examined three times, one of whom was rejected each time; four have been examined twice, two of whom have been rejected both times. You will see that we have examined sixty-one different persons, and found forty-nine qualified—some more than we ought, perhaps.

The expenses, thus far, have been as follows:

Printing twenty-one sets of examination papers, say -	$42 00
Stationery, six examinations, $5 each, - - -	30 00
Compensation of the committee, 1880 and half of 1881, $110 and $55, - - - - - - - - -	165 00
	$237 00

Yearly expense now:

Compensation of committee, - - - - -	$110 00
Printing, say - - - - - - - -	15 00
Stationery, say - - - - - - - -	10 00
	$135 00

The Committee are of the opinion that the effect of the change in the manner of examining students has been very beneficial to the profession and to the public. Students of law are now studying law instead of loafing about offices. We are going to have better lawyers—better read lawyers. But of this you can judge as well as I can.

I cannot speak for the committee as to changes in the present system. I can only speak for myself, and so speaking, I should be in favor of adopting some of the suggestions made in the recent article in the *Law Review*, particularly that requiring an examination at the commencement of the course of law study. Our examinations have shown that the want of mental discipline at the beginning of the course has been a very serious obstacle to successful study. If there could be an examination at the beginning, the result of which should control the candi-

date's commencement of study, I think it would be a long step in advance. I think, also, an established course of study would be an improvement. Experience will suggest further improvements, no doubt. * * * * *

Yours, respectfully and hastily,

WM. M. CHASE.

ATTORNEYS AND COUNSELLORS.

37. No attorney or counsellor shall be permitted to take any part in the conduct of a cause before a jury after he shall have testified for his client in the same cause.

38. No attorney or counsellor shall be compelled to testify in any cause in which he is retained, unless he shall have been duly summoned to attend as a witness in the cause previous to the commencement of the term.

39. No attorney or counsellor shall, on pain of being disbarred, be bail in any cause depending before the court.

40. Any person may be admitted as an attorney who shall satisfy the court that he is of good moral character, and that he has pursued the study of the law, in the office and under the direction of some counsellor of this court, with the consent and approbation of the bar in the county where such counsellor resides, for three years, or in the office of some counsellor of the highest judicial court of any other state for two years, and in the office of some counsellor of this court for one year, at least, with the consent and approbation of the bar in the county in which such counsellor resides, and shall pass a satisfactory examination by the court or by a committee of the bar appointed for that purpose: *Provided, however*, That any person admitted an attorney of the highest court of any other state may be admitted upon furnishing satisfactory evidence thereof, and that he has practised as an attorney of such court one year.

The following additional rules were adopted, to take effect from and after July 1, 1878:

1st. Any person desiring to be admitted to practise as an attorney shall, at least fourteen days before an adjourned law term, file with the clerk of the court of the county wherein he resides, a petition stating his age, residence, term of study, and with whom; also, certificates of study and moral character, as now required by the rules; and if such certificates are found sufficient, he shall be examined at such adjourned term by the court or a committee of the bar, specially appointed by the court for that purpose, and if found qualified, shall then be admitted, and no person shall be admitted except as aforesaid: *Provided, however*, That any person regularly admitted an attorney of any court of any other state may, without such examination, be admitted here, upon furnishing satisfactory evidence of his admission as aforesaid, and that he has practised as an attorney of such court one year at least.

2d. Any person proposing to study law with the view of afterwards applying for admission in this state, shall, within fourteen days after he commences such study, file with the clerk of the court of the county wherein he proposes to study, a notice stating that he has commenced the study of the law, with whom, and when; also a certificate of the attorney with whom he is studying, stating that fact, and when such time of study began: *Provided, however*, That any person now pursuing the study of the law may file such notice and certificate within fourteen days after this rule takes effect.

VERMONT.

RUTLAND, VT., *June 27, 1881.*

CARLETON HUNT, ESQ.

MY DEAR SIR:—In response to your circular of the 17th, I enclose a copy of the "rules" now in force in this state in respect to admissions to the bar. We have no law school.

I am clearly of opinion that while the rules, in themselves, if efficiently executed, might be adequate to maintain a respectable standard of attainment, yet their lax administration by the several county committees has resulted in a failure to exclude many improper candidates. My suggestion would be a state board, instead of fourteen local boards; in the hope thereby of securing uniformity, and less susceptibility to the influence of acquaintance with the applicants and their friends.

Very respectfully,

ALDACE F. WALKER.

—

RULES FOR THE ADMISSION OF ATTORNEYS IN THE SEVERAL COUNTY COURTS, AND IN THE SUPREME COURT, ETC.

14 Vt. Reps. p. 565.

RULE I.—Each applicant for admission as an attorney of the county court shall, at the time of applying for admission, be at least twenty-one years of age, and of good moral character, and shall have studied with an attorney or attorneys of the Supreme Court five years next previous to such application, the last six months of which shall be in the county where application is made: *Provided*, That any time less than one year and six months may, in the discretion of the court to which such application is made, be deducted from the period aforesaid, on account of previous academical studies of such applicant, short of a full course of collegiate education; and that two years and six months shall be deducted in case such applicant shall have graduated at any university or college.

RULE II.—It shall be the duty of the several county courts to appoint standing committees in each county, composed of at least three members of the bar of the county, whose duty it shall be to examine applicants for admission as attorneys to the several county and supreme courts.

RULE III.—Whenever an applicant shall wish to be examined for admission, as an attorney, to any of the county courts, it shall be his duty to apply to the committee of examination, a reasonable time before the session of the court at which he expects to be admitted, whose duty it shall be to give such applicant a thorough but impartial examination, either public or private, at their discretion.

RULE IV.—If, upon such examination, the committee shall, in their opinion, find such applicant qualified for admission as an attorney of the county court, they shall recommend him in writing to the court for admission.

RULE V.—If, upon such examination, it shall be established by affidavit, to the satisfaction of such court, that such applicant has complied with rule first, relative to the term and place of study, and shall be of good moral character, and of the requisite age, they shall cause the proper oaths to be administered to him.

RULE VI.—Any attorney who shall have practised two years before the county court, with a good reputation, may, upon recommendation in writing of the standing committee of the county court, grounded upon an examination, be admitted as an attorney of the Supreme Court.

RULE VII.—An attorney or counsellor from another state may be admitted an attorney of the several courts in this state on the same terms on which attorneys from this state are or shall be admitted attorneys or counsellors in such state. And any attorney from another state, after having studied one year with an attorney of the Supreme Court, may, on examination and recommendation in writing of the committee of the county court, be admitted an attorney of the several county courts; and if he shall have been an attorney of the highest court of law in such state, he may, upon a like examination and recommendation, be admitted an attorney of the Supreme Court.

RULE VIII.—Any attorney or counsellor from a government without the United States, after having studied one full year with an attorney of the Supreme Court, may, on examination and recommendation of the standing committee of the county court, be admitted in the discretion of said court as an attorney thereof; and if he be an attorney of the highest court of law in the country from which he comes, he may, after such term of study and upon like examination and recommendation of such committee, be admitted in the discretion of the Supreme Court as an attorney of the same.

IN CHANCERY.

Rutland County, April Term, A. D. 1843.

It is ordered, that the following rule in relation to the admission of solicitors in chancery for the first judicial circuit, be adopted.

Any attorney of the county court, who shall have practised with reputation two years before that court, may be admitted a solicitor in chancery, either with or without examination for that purpose, as the chancellor shall direct. And every attorney of the Supreme Court shall be a solicitor in chancery without examination, or further ceremony of admission.

MASSACHUSETTS.

REPLY FROM THE STATE OF MASSACHUSETTS.

* * * * * * * *

I enclose a copy of laws of Massachusetts now in force, regulating admissions to the bar.

* * * * * * * *

The Law School of Harvard University, as at present organized, undoubtedly affords a more thorough training in the law than any other school can give.

The Boston Law School is a most excellent one.

In regard to examinations for the bar in this state, I beg leave to refer you to portions of a paper by Francis L. Wellman, in the *American Law Review* for May last; a copy of which I forward to you.

* * * * * * * *

I am, very truly, yours,

LEONARD A. JONES,

Of the Local Council for Massachusetts.

—

STATUTORY PROVISIONS NOW IN FORCE IN MASSACHUSETTS, IN REGARD TO ADMISSIONS TO THE BAR.

Stat. 1876, ch. 197.

A citizen of this state, or an alien who has made the primary declaration of his intention to become a citizen of the United States, and who is an inhabitant of this state, of the age of twenty-one years and of good moral character, may, on the recommendation of an attorney, petition the Supreme Judicial Court or Superior Court to be examined for admission as an attorney, whereupon the court shall assign a time and place for the examination, and if satisfied with his acquirements and qualifications he shall be admitted.

G. S. ch. 121, § 30.

Whoever is admitted as an attorney, shall in open court take and subscribe the oaths to support the Constitution of the United States and of this commonwealth, and the oath of office.

G. S. ch. 121, § 31.

The oath of office shall be as follows:

You solemnly swear that you will do no falsehood, nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give

aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you God.

G. S. ch. 121, § 32.

A person admitted as an attorney in either court may practise in every other court in the state; and there shall be no distinction of counsellors and attorneys.

G. S. ch. 121, § 33.

A person admitted as an attorney or counsellor of the highest judicial court of any other state of which he was an inhabitant, and who afterwards becomes an inhabitant of this state, may be admitted to practise here upon satisfactory evidence of his good moral character and his professional qualifications.

G. S. ch. 121, § 34.

An attorney may be removed by the Supreme Judicial Court or Superior Court for any deceit, malpractice, or other gross misconduct, and shall also be liable in damages to the party injured thereby, and to such other punishment as may be provided by law; and the expenses and costs of the inquiry and proceedings in any court for the removal of an attorney shall be paid as in criminal prosecutions in the same courts.

NEW YORK.

WALL STREET, NEW YORK, *August 12, 1881.*

SIR:—* * * * * * *

According to the present rules, to be admitted as an attorney, the applicant must be twenty-one years of age, of good moral character, and a resident of the department in which he is examined; and must have passed a regular clerkship of three

years in the office of a practising attorney of the Supreme Court of the state after he has reached the age of eighteen years. An allowance of one year is made to graduates of a college or university. Time spent in actual attendance upon law lectures in the law school of any college having a separate law department, not exceeding one year for college graduates and two years for others, may be reckoned as part of the clerkship.

Applicants having the degree of such law school without the state, after two years spent in such school, may have the same allowed as part of clerkship.

The applicants also must be examined by the general term of the Supreme Court of the district, and if found fit in learning and character, will be licensed to practise as attorneys only. Such examination must be a satisfactory oral one on the law of pleadings, practice, real and personal property, co-partnership, negotiable paper, principal and agent, principal and surety, insurance, executors and administrators, bailments, corporations, personal rights, domestic relations, wills, equity jurisprudence, and evidence.

Attorneys who have been two years in actual practise in the Supreme Court of the state, may apply to be admitted as counsellors upon passing a satisfactory examination by the court, and must have license as such. Counsel of three years' practise in other states, and foreign counsel, properly recommended, admitted in the discretion of the court.

The means provided by public authority for facilitating the study of the law?

None; unless it be the law libraries furnished by the state at the capital and in each county town.

Truly, your obedient servant,

CLARKSON N. POTTER.

Hon. CARLETON HUNT,
Chairman, etc.

NEW JERSEY.

CARLETON HUNT, ESQ.,
Chairman of Committee on Legal Education
and Admissions to the Bar.

DEAR SIR:—In our state we have always had the two grades of attorneys and counsellors, the latter only being allowed to speak in the higher courts. Admission as attorney must be after four years' clerkship, and an examination in open court, before the full bench of the Supreme Court in Trenton. Admission as counsellor is by like examination after three years' practise.

As long as the admissions were few no better means could perhaps be devised than this system; for although the examination was only upon Blackstone and the practice and statutes, it was thorough, public, and in the presence of the court and bar, for whose approval the candidate could not but be most anxious.

When, however, the number of candidates grew from one or two a term to thirty or more, it is manifest that this plan of examination became lamentably insufficient. The few hours given by the court were ample to test the acquirements of a few. It was entirely too short a time to allow but a few minutes to each of the many.

In improving the system, however, it has been the general sense of our bar that this public examination ought not to be given up. By its very publicity it is prevented from degenerating into a merely formal pass examination, as a private examination, before unpaid, kind-hearted, and perhaps slightly indolent members of the bar, is almost certain to do. The experience of many of our state has led them back to the public examination before the court.

But we have thought, and at the last term obtained a rule of the court, that both attorneys and counsellors, before admission to the public trial, must pass an examination in writing before examiners appointed by the court.

The general feeling has been likewise that not much change should be made in the *required* subject. A *thorough* knowledge of the principles and definitions of the common law will always make a good lawyer of a sensible man. But the examiners have thought it wise to add questions on other books and subjects, so as to make the examination a thorough test of the industry and acquirements of the candidates. In fairness to them these additions must be gradual.

The annexed notice, given by the examiners to the students, will show their action in the matter. It is, of course, a trial, and how well it will succeed is a question.

In order to secure simplicity, consistency, and success, it has been suggested:

That the examiners come into office say two a term, so that the board will not all be changed at once.

That each prepare questions specially on a certain subject for the written examination, when they will be dictated and written down by the candidates without the formality of previous printing.

That the papers be graded, at least as to the best of them, and perhaps that some be passed *cum laude.*

Yours, very respectfully,

RICHARD WAYNE PARKER.

August, 1881.

PENNSYLVANIA.

PHILADELPHIA, *July 15, 1881.*

CARLETON HUNT, ESQ.,
Chairman Committee on Legal Education.

SIR:—The statute law on the subject empowers the different courts to frame rules regulating this important subject. In pursuance of this authority, the several courts have adopted rules which it would be impossible to collect. They are substantially the same as those adopted by the courts of Philadelphia county, which I shall now briefly enumerate.

A Board of Examiners consisting of ten members of the bar is formed by the appointment of the Judges of the Courts of Common Pleas and Orphans' Court.

Before this board all desirous of beginning the study of the law are required to present themselves for examination in grammar, arithmetic, algebra, universal history, particularly that of England and America, spelling, etymology, and geography.

A course of legal study in the office of a practising attorney of the Commonwealth for three years, or, if of full age (21) at the time of beginning, his studies of two years is further necessary, after which time a second examination in legal branches is necessary.

In addition, it is required that such person give, in writing, evidence of his good moral character, and that he be a citizen of the United States.

However, any citizen of the United States of full age (21), who shall have been graduated Bachelor of Laws of the University of Pennsylvania, who shall have passed the examination in the different branches of education as above enumerated, shall be admitted to practise as an attorney.

Two years after the admission of an attorney to the Courts of Common Pleas and Orphans' Court, he is entitled without further examination to be admitted to the Supreme Court of the state.

Attorneys-at-law from other states shall be admitted to practise in the county courts [of Philadelphia], upon producing satisfactory evidence of their admission to the highest court of the state from whence they came, and of having practised law in such state at least seven years, unless they have resided at least two years in Pennsylvania, one year of which shall have been in Philadelphia, in which case it is sufficient to produce a certificate signed by the chief-justice of such state, certifying that the applicant is a member of the Supreme Court of such state and of good moral character.

Very respectfully,

J. EDWARD ACKLEY.

DELAWARE.

WILMINGTON, DEL., *July 13, 1881.*

MY DEAR SIR:—No means are provided by the state or any public authority or otherwise, "to promote and facilitate the study of the law."

The above rules have been adopted only at the last May Term, and were drawn with the view "of elevating the standard of qualification for admission to the bar, and as the best means of accomplishing that object."

Very truly, yours,

ANTHONY HIGGINS.

CARLETON HUNT, Esq.,
Chairman.

It is ordered by the court that the following shall be substituted for Rule I. of the rules of this court:

Rule I. There shall be appointed at the spring term in each county, to serve for one year, or until their successors are appointed, a Board of Examiners of not less than three, nor more than five members of the bar.

No person shall be registered as a student of law except upon the certificate of said board that he is a resident of this state, of good character, and that he has been found, upon examination, to be well qualified to commence the study of the law. Such certificate shall be endorsed with the approval of a judge, and filed with the Prothonotary, and recorded in his appearance docket.

Upon application for the admission of a student to practise as an attorney of this court, it will be required that he shall be a resident of this state, of full age; that he shall have studied the law at least three years after the filing of said certificate, under the direction of a member of the bar of this state who

has been in practise for at least ten years theretofore, or a judge of any of the courts of this state, or of a judge of the United States residing in this state; that he be a person of integrity and good character, and that he shall have been privately and fully examined by said Board of Examiners, and he shall be admitted only on the written report of said board, stating his qualifications, and recommending his admission.

All examinations by said Board of Examiners shall be in vacation, and may be oral or in writing, or both, in the discretion of the board.

The said board shall have authority to establish such general rules as they may deem requisite in the premises, not inconsistent with the rules of this court.

The action of a majority of said board shall, in all cases, be sufficient.

—

It is ordered by the court that the following shall be substituted for Rule III. of the rules of this court.

Rule II. Attorneys regularly admitted elsewhere, if they be residents of this state, of good character, and have practised for three years in the superior courts of any other state, upon the written report of the Board of Examiners, stating their qualifications and recommending their admissions, may, in the discretion of the court, be admitted to practise in this court. Said board are authorized to subject any applicant under this rule to such examination as they may deem expedient for the purpose aforesaid.

Attorneys may be admitted *pro hac vice* in the discretion of the court; but no attorney, while engaged in the practise of law in another state, shall be admitted to practise in this court, except *pro hac vice.*

It is ordered by the court that the following shall be substituted for Rule XCII. of the rules of this court.

Rule XCII. When the court shall adjourn the term for a period of more than ten days, all judgments, confirmations, and other matters and things heretofore required by the rules and practice of this court to be entered or done on the last day of the term, shall hereafter be entered and done on the day of such adjournment.

MARYLAND.

BALTIMORE, MD., *July 22, 1881.*

MR. CARLETON HUNT,

Chairman of the Committee on Legal Education and Admissions to the Bar.

DEAR SIR:—In compliance with the request contained in your communication of the 17th of June last, I have the honor of enclosing to you a copy of the provisions of the code of our state (Maryland) in regard to the qualifications for admissions to the bar of this state.

I deem it better to send you a copy of these provisions, rather than a summary of them, as any summary, to be satisfactory, could hardly be briefer than the provisions themselves.

The third and fourth sections bear particularly upon your inquiry. There can not be said to be existing in our state any "means provided by public authority for promoting and facilitating the study of the law."

In the University of Maryland, an institution founded more than half a century ago, and located in the City of Baltimore, the Law Department has recently been established, as was originally contemplated it should be, by the founders of the university. In this department there are a dean and four professors. A full course embraces two years, two sessions in each year. The course of instruction is by lectures and moot courts. The professorships at present are held by distinguished and prominent members of the bar, and every branch of the law is taken up and discussed in full course. The influence of

the institution has proved very beneficial. It has done much to promote the study of the law, and elevate the standard of qualification for admission to the bar. By thus bringing the students of our profession together in a body, it creates and promotes an *esprit du corps*, and excites emulation—a great desideratum, especially among the youth of our country.

This was a noted want in the old system of instruction, where the student was left to pursue his solitary studies in the back office of his professional preceptor, with little incitement to study, and without that zest for it which springs from intercourse and the collision of minds bent upon a common pursuit. Frequent examinations by the professors during the course of each year are held, and the successful students are graduated Bachelors of Law at the end of their term. As a further incitement to study, rewards in money are given to the successful competitors for prize essays on legal subjects.

I may add that these appeals to, and qualifications of, the "*auri sacra fames*" is a feature which, personally, I am not altogether disposed to pronounce a favorable opinion upon. That comes early enough "by nature" in the practise of our profession. It is but fair to add, however, that the faculty, whose experience is much larger and better than mine, give this practice their cordial sanction. The average number of pupils is about fifty, and the institution is growing in influence and importance; the number of students both from the city and state increasing with every year. There is no limitation as to the age of the student, nor is there any previous collegiate or university training required for admission to this law school. I enclose the calendar for the year 1880, to which I refer you for more detailed information of the methods of instruction. It receives no support from the state, the salaries of the professors being paid by fees from the students. Graduation at this institution is not made necessary for admission to the bar. In my judgment it would tend very greatly to promote and facilitate the study of the law, and elevate the standard of our profession, were a provision made in the code to that effect. In

the medical profession a diploma from a medical college is a necessary condition to the practise of that profession. I do not see why a similar condition should not be required in our profession, charged as it is with such grave responsibilities touching the lives, the liberties, and the properties of our fellow-citizens. This provision, however, should not supersede thorough examinations of the students in open court upon applications for admission to the bar, but should be preliminary and ancillary thereto. I think a provision of that character and to that effect would materially tend to diminish the number of those who, without the necessary provision and equipment, creep into the profession by the personal influence of their preceptors, who are anxious to relieve themselves of the encumbrance of a dull student by turning him into an incompetent lawyer, or who have not the courage to refuse to ignorance and stupidity the opportunity of making themselves more painfully conspicuous in the arena of our profession.

With great respect and esteem,

I am, very truly,

Your obedient servant,

A. LEO KNOTT.

ARTICLE 59.

Code of Public General Laws.

SECTION 1. No attorney or other person shall practise the law in any of the courts of this state without being admitted thereto as herein described.

SECTION 2. All applications for admission as attorney to practise the law in this state shall be made to some one of the circuit courts for the counties, the Supreme Bench of Baltimore City, or to the Court of Appeals, in open court.

SECTION 3. Upon every such application for any white male citizen of Maryland, above the age of twenty-one years, and

who shall have been a student of law in any part of the United States for at least two years previous to said application, or a graduate of the Law Department of the University of Maryland, it shall be the duty of the court to which such application shall be made, to appoint an examining board of not less than three members of the bar, who shall examine the applicant in the presence of the court touching his qualification for admission as an attorney; and the said court shall also require and receive evidence of his probity and general character, and if, upon such actual examination, and being satisfied that he has been a student of law for at least two years, or a graduate of the Law Department of the University of Maryland, and having heard evidence of his probity and general character, the said court shall be of the opinion that said applicant is qualified to discharge the duties of an attorney, and worthy to be admitted, the said court shall admit him, and the circuit courts for the counties and the Supreme Bench of Baltimore City are authorized to appoint a permanent examining board, but no member of said board shall be appointed for a longer period than one year.

SECTION 4. Upon the admission of any applicant to practise law in any of the courts of this state above mentioned, it shall be the duty of the court so admitting him to certify the same with their own proper signatures, which certificate shall be recorded, and a copy thereof, authenticated with the seal of the court, shall be available and sufficient to entitle the applicant so admitted to admission to practise in any of the courts of this state.

SECTION 5. If, upon the application and examination of any citizen as aforesaid, the court shall be of opinion that he ought not to be admitted, the said applicant shall not again be entitled to a hearing for admission in any court of this state until the expiration of twelve months after the first application; and if, upon a second application, he shall be rejected, he shall not again be heard until the expiration of twelve months after such second application.

SECTION 6. Upon the application of any lawyer who may have practised, or who may have been licensed to practise in any other state, district, or territory of the United States, for admission to practise in the courts of this state, it shall be the duty of the court to whom he shall apply to admit him upon the same terms and under the same regulations that a citizen of Maryland would be admitted to the courts of the state, district, or territory in which said applicant may have practised, or may have been licensed to practise: *Provided*, That in the said state, district, or territory the mode and terms of admission to the bar be regulated by law.

SECTION 7. Upon the application of any citizen of any other state, district, or territory, in which the mode and terms of admission to the bar are not regulated by law, to practise law in any of the courts of this state, the said courts shall admit him or not as in their discretion they may think fit.

SECTION 8. If, upon the rejection of any applicant for admission to practise law in any circuit court in this state, or in the Supreme Bench of Baltimore City, such applicant shall deem himself aggrieved by such rejection, he may apply to the Court of Appeals for admission to practise law in said court, who shall examine such applicant as to his qualifications, character, and time of studying, in manner and subject to the regulation hereinbefore provided as to such examination; and if, upon such examination, the Court of Appeals shall determine that the applicant ought to be admitted to practise in the Court of Appeals, he shall be admitted accordingly, and such admission shall entitle him to admission to practise in any court of this state.

SECTION 9. All persons who are now, or shall hereafter be, admitted to practise law in the Court of Appeals of this state, shall be entitled to practise law in any or all other courts of the state, upon exhibiting to the judge or clerk thereof a duly authenticated certificate of such admission to the bar of the Court of Appeals.

BALTIMORE, *July 19, 1881.*

DEAR SIR:—I assume, in the first place, that it is desirable that there should be some public authentication of the qualifications of candidates for admission to practise.

I assume, in the next place, that such public authentication is best given after an examination of the candidates by some competent authority.

In Maryland, and I presume elsewhere, two principal plans of study are pursued. In one, the student enters some attorney's office, and there remains for two years (the period of study prescribed by our law). He reads according to a course marked out for him; he has an opportunity of seeing, and, if diligent, taking a part in current practice, and he receives such instruction as the gentleman he is with finds convenient to give him—which in most cases is very little. He loses the advantages of oral teaching, which are great, because the student has to attend and at regular times, and must necessarily carry off something; but he does learn something of practice. He learns or ought to learn how to draw pleadings, deeds, wills, etc., and to attend to the service and execution of them, and he occasionally transacts ordinary minor business. In the other plan, the student attends a law school, and generally enters himself at some lawyer's office at the same time as a student, presumably to gain the advantages which I have mentioned. He pursues his studies according to the system of the particular law school —as to which I shall say nothing, except that perhaps the *course* of most of them resembles too much the scheme of education of priests and monks—and my experience is that the office which he attends is used by him merely as a place for preparing himself for the lectures of his school, and he generally has very little time to attend to anything else. I think, therefore, he has few opportunities of acquiring knowledge of the practical part of his profession, and I have found that students of law schools are not generally as proficient as others in drawing

pleadings, deeds, and the like, and in the knowledge of actual practice.

After the two years of preparation have elapsed the student presents himself for admission to practise. By our law he is required to be examined in open court by a committee (usually appointed annually) of lawyers, who serve gratuitously, before the judges, and at the conclusion of the examination the judges determine whether he is fit to be admitted, and admit or reject him accordingly. The objections to this plan are sufficiently obvious. In the first place, gratuitous work is seldom, if ever, well done. In the next place, there is no uniformity of method in dealing with the candidates. Next, no committee likes to press students, for reasons plain enough, and besides, lawyers are, I think, naturally indulgent to the ignorance of candidates; and next and principally, the number of candidates to be examined and the number of examiners is generally so large, and the time appropriated for the purpose so limited, that it is impossible for each candidate to be asked more than a few questions. When you add to this that the gentlemen of the committee rely upon the lawyer with whom the student has been, or on the professors of the law school who have had the instruction of him, for his qualifications, and if he fails in giving satisfactory answers, feel inclined to set his mistakes down to *mauvaise honte*, or some cause of the kind, and to trust that he yet possesses sterling knowledge, the examination tends to become more and more a mere form. As to the court, if it decides upon the qualifications of the candidate from the evidence before it, it is limited to the course of the examination. I believe it is not usual for the court to interfere, and that candidates are rarely rejected. A committee of lawyers examining candidates before learned judges may seem very fine to the vulgar mind. But I venture to doubt, nay, more than doubt, whether a court is a proper tribunal for an investigation of the fitness of candidates. It certainly is exercising neither a voluntary nor a contentious jurisdiction in such a matter, unless a sort of "Devil's Advocate" should be appointed to show cause

against the admission of the candidate. A judge, as a judge, has no superior fitness to other people in determining such a question, and from his habits is less fitted, I think, than others for the purpose. The only object of the interference of the court is to authenticate the admission of the applicant, and the judges would be slightly surprised, I imagine, if it were suggested to them that they guaranteed the fitness of the candidate whom they admitted to practise for the performance of any professional business intrusted to him. Yet such a guarantee ought to be involved to a certain extent in the admission of a candidate. Besides, in Baltimore, at least, public business is suspended for a time in all the courts for what is a private affair, unless it is to be taken that the examination of aspirants to the bar is a matter in which the public is so interested as that the loss of time occasioned thereby is nothing, in which case surely the duty ought not to be so perfunctorily discharged. I think decidedly the courts ought to be reserved for other functions. And as to the examinations themselves, I am sure nobody could compare the questions put to the candidates by such committees with the questions proposed to persons of the same relative standing in other departments of science in the written or oral examinations at the large universities here and abroad, without a smile.

My impression, therefore, is that the better plan would be to turn the whole affair over in every state to a public officer of the state, who, of course, would necessarily be a lawyer, and who should be paid. He would have no interest of any kind in the candidate, and no interest to do anything but his duty, a main part of which I assume would be, or he would find it would be, to show no favors to anybody and to make no allowance for ignorance. Such an officer would no doubt prescribe a scheme of legal education to which all, whatever else they might know, would necessarily conform, and this would be at least uniformity, without which such a thing as a standard cannot exist. He would be able to give the requisite time and attention to the affair, and the uncertainty of the

issue and the certainty of the ordeal would, I think, tend to make both student and instructor more careful in the preparation of the candidate. It strikes me it would be vain to attempt more at present. The system of education pursued in this country is hasty and slovenly. One is struck with the inaccuracy of the knowledge people possess. To know a thing is comparatively of small advantage, unless you know it accurately. But accuracy is one of the main things which training gives, and, unfortunately, youth in this country do not get proper training knowledge. As most persons have to acquire this habit when they commence to study law, I presume the officer whom I have suggested would not at first make his *projet* too extensive. But in time he might, and I think would, be able to force candidates up to a higher standard of acquirement than I think possible under the existing system. At all events, the man who would devise some means of making students of the law work hard, would deserve well of the profession, and I see no means of doing this except under the authority of the state. The Germans are now the wheel-horses of the world in every department of science and progress. Naturally, they are not brighter nor as bright as the Americans, but they are made to work hard, and what they acquire they acquire by dint of hard work. I see no reason why a select body like lawyers, who are so abundantly rewarded by the public, should not be made to deserve the public confidence more, and to repay it by better service, which I consider would be the effect if the profession were accessible only after a course of strict and conscientious labor and application. Of course, it may be said that such a power of admitting or rejecting candidates ought not to be lodged in one man's hands on account of the dangers, etc. I do not myself fear the dangers, but, if you choose, have a board. All I say is, have some *paid* public functionary whose business it will be to see that no improperly qualified person is admitted to practise, and the standard of professional acquirement will necessarily be raised. It does not strike me that the compensation of such an officer, or board

of officers, need be high; but it ought to be sufficient to induce gentlemen of character to undertake it, and it ought to be paid by the state, so as to make the examining authority perfectly independent.

I am, dear sir, yours, very respectfully,

J. J. ALEXANDER.

CARLETON HUNT, Esq.,
New Orleans.

VIRGINIA.

LEXINGTON, VA., *July 22, 1881.*

HON. CARLETON HUNT,
Chairman.

MY DEAR SIR:—I shall be as specific as is consistent with brevity in answering to the comprehensive scope of your inquiry.

1. Any man of twenty-one years of age, who shall be certified by the court of the county of his residence to be of good character, may be licensed by two of the judges of the Supreme or Circuit Courts of the state to practise law in any of the courts of the state, having taken the oaths prescribed by law for good conduct in his profession, which oaths must be taken in each court in which the applicant shall seek to practise.

2. In the study of the law, Virginia has provided a school of law in the University of Virginia, at Charlottesville. This institution is supported at public cost, and belongs to the state, and is managed by a board of visitors, appointed quadrennially by her executive.

Under charter from the state, the Washington and Lee University, which is endowed by private funds, and not at all by the state, now under state control, has a law school.

The Richmond College has like foundation with Washington and Lee University, and has a law school.

I send herewith the catalogue statement of each of these schools.

3. Your third branch of inquiry is as to "the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means of accomplishing that object."

I feel very strongly the need of higher qualifications for members of the legal profession. But it is a different question from such qualifications being made prerequisite to admissions to the bar. The former, in my judgment, is the most important. Elevate the qualifications of those who enter the ranks of the profession, and the standard of preparation prerequisite will rise with it. By this I do not mean that the examinations for admission to the bar should be less stringent than they are now; on the contrary, it is desirable they should be even more so. But I mean to say, that with the rise in the average qualifications, there would follow more stringency in the pre examination for admission, and unless the general average is advanced, the amount of prerequisite preparation will continue low.

I address myself, therefore, to the best means for elevating the standard of qualification for the profession.

The first and most valuable is the law school. The importance of this I need not dilate upon. Good text-books, supplemented by the lectures and explanations of an intelligent professor, and with close and rigid examinations from day to day, are of incalculable benefit in making definite and exact the acquisitions of a diligent student.

The second is to lengthen the term of study. Diligent cramming by a mind quick in acquiring may prepare a student to pass an examination immediately after finishing the course. But to digest acquisition, to assimilate what is taken in, requires time—more time than one year. Two years at least; I would say three years are really needful for the slow but sure

digestion into systematic acquaintance with the primordial principles of the legal service. Until this becomes the custom of the country we cannot hope to have a really learned and profound corps of lawyers. We may have eloquent advocates and able reasoners upon a special case, or single subject, but we cannot have masters in the philosophy and history of the law. The law is a science of historic development, and a master of laws must know it as it now is, in its historic relations, and trace its present frontage to the germinal principle from which it historically sprang. *Scire autem proprie est, rem ratione et per causam cognoscere.*

And just here I feel the practical force of the objection. In many parts of our country law schools are not accessible, or are too expensive for the poor, young, and meritorious aspirant for admission to the bar, so many of whom have ability and industry which will fit them to take high position in its ranks, despite all the difficulties in their way. Some have not the time to spare from remunerative labor to study for two or three years.

Hence, while I would raise the standard of qualification by requiring a two or three years' course at a law school for passing through it, I would be reluctant to make such a term of study a prerequisite to admission to the bar. The standard being raised for those who have such favorable opportunities, would force a longer labor by those who had not to meet their competitors at the bar, and thus raise the average qualification of the whole profession.

A third means to which I must refer is the important study of "*comparative jurisprudence.*" The law is a progressive science, and should become the best expression of the social force needful for the civilized life it is designed to regulate, guide, and control. To do this it should not content itself with the law, customary and statutory, as it is found in any particular state or country. By comparing its own with other systems, and adapting the principles it finds elsewhere to its own improve-

ment, it would advance and promote the well-being of the people over which it is established.

Especially would I impress this view in connection with the relations of the civil law and the common law systems. It is out of place here to remark upon the curious contributions which the civil law has made to the common law, even excluding the long-conceded indebtedness of our equity system to the learning of the civilians. But I am satisfied, and it has long been a favorite idea with me, that every law school should give to its students a course of instruction in both systems. The common law student should at least have a knowledge of the history and general principles of the civil law, while the civil law student should have like instruction in those of the common law. The effect of this in giving breadth, depth, and height to the bar practising under either system cannot be overestimated.

How strikingly illustrative of this point is the comparatively new science of private international law, or the conflict of law, as it is termed. This law loosens its local moorings, and launches on the wide sea of natural right and justice, and only binds itself by local statutes where justice and right demands it. It adopts the rules of procedure of the *jus gentium* of the Roman law, and applies to the special case the local law which justice requires should rule its decision.

And so, this *jus gentium* has widened its scope, and founded the *jus inter gentes*—the law of the nations has made the law between the nations—and thus law in its local operations limits itself to the code of universal justice.

A fourth important consideration grows out of what I have just said.

It is essential to the American student to enlarge his acquaintance with international law, which our magnificent and wonderfully increasing commerce makes a prime factor in the preparation for the rank of legal statesmanship. A lawyer in our age and country must appreciate his relations to the state, and thus to its relations to the world.

I need hardly add, under this head, that the lawyer in the United States must study deeply and earnestly constitutional law, not only in its historic relations to our English institutional liberty, but to the colonial, confederated, and constitutional relations of the states *inter se*, and to their union under one common government. The time has come for our profession to be content no longer with superficial views of this great subject, but to become profoundly versed in the historic events and epochs which have led to our present system of constitutional government, in order to uphold it as the great instrument for protecting the liberties and promoting the progress and well-being of the people of our common country.

With these hasty suggestions, which are too crudely thrown together to be of much use,

I am, very truly, yours,

J. R. TUCKER.

WEST VIRGINIA.

PARKERSBURG, WEST VA., *July, 1881.*

HON. CARLETON HUNT,

Chairman Committee on Legal Education.

SIR:—In compliance with the *first* resolution contained in your circular letter of June 17th last, I have the honor to report the following "facts in regard to the qualifications existing by law for admission to the bar in West Virginia," etc., etc.

By section 1, chapter 119, Code, as amended by section 1, chapter 145, Acts, 1872–3: "Any three judges, composed, either in part or in whole, of the Supreme Court of Appeals, or of the Circuit Courts of this state, may grant a license, in writing, to practise law in the courts thereof, to any person who shall, on examination, *be duly qualified*, and who shall produce a certificate of the county court of the county where he has resided one year next preceding, that he is a person of honest demeanor, and is over twenty-one years of age."

Section 2, chapter 119, provides: "Any person duly authorized and practising as counsellor or attorney-at-law in any state or territory of the United States, or in the District of Columbia, may practise as such in the courts of this state, upon producing before the courts, in which he intends to practise, satisfactory evidence of his being so authorized.

Attorneys are required to take the oath of fidelity to the Constitution of the United States and of the state, and to honestly demean themselves in the practise of the law.

It will be seen that there is no "standard of qualifications for admission to the bar," except such as any one or more of the examining judges may in each particular case adopt.

A more liberal and simple mode of filling the ranks of the profession could hardly be devised.

This method of making attorneys was first enacted in Virginia, in 1786. In 1642 they were examined and licensed by the courts. In 1680 by the governor. In 1732 by examiners appointed by the governor. In 1769 by examiners appointed by the judges of the general court.

Under this system of nearly a century, a great number of the most celebrated, learned, and honorable men in the profession were admitted to practise. It is true, many incompetent and unsafe persons have, under it, been licensed as lawyers. It could not be otherwise when there was no regular standard for examinations.

Especially, situated as the people of West Virginia were for so many years, the lawyers who helped to lay the foundations of social order west of the Allegheny mountains had neither common, nor any, schools, and but little means for education existed. Lawyers were made of sturdy young men, who worked in the fields by day, and pored over Coke or Blackstone by the light of pine-knots at night.

Judges of singular clearness, breadth, and cogency of mind, who grew up from this rank, adorn the annals of the West Virginia bar.

Without particularizing, nor with any intention to treat with contempt, it may be said the practice in conferring the honorable title of *lawyer* has often been thus: The applicant for admission spends a year or two thumbing Blackstone or Kent, or both, with now and then a dip into Chitty or Starkie, in the lonesome, dusty, dreary round of a country attorney's office, where he was left to work his way as best he could, with little or no guidance but his own common sense (which often was no guidance at all). He may have asked a few vague questions, and received as few vague answers.

If he could spell and write, sometimes he was set to copying notices, or some simple forms.

For lectures, the county court, at its monthly or quarterly session, with its attendance of the sages of the law, furnished speeches and arguments on many points of principle and practice, which answered, practically, all the purposes of most courts.

Occasionally the youth had the benefit of hearing decisions made by the learned judges of the Circuit Courts, which sat once or twice a year at every county seat.

When the time arrived at which the county court could certify that the candidate for legal labor was twenty-one years of age, he secured the certificate of that tribunal, that, in its opinion, he was of honest demeanor and had resided in the county one year next preceding.

Armed with this, he set out to find the nearest and most amiable judge, to whom he is introduced. The judge who is first sought may, or may not, have examined the candidate with thoroughness. Upon his examination much depended; for as the examinations were conducted separately, at different times and places, a brother judge would append his signature as of course, placing the responsibility of the license being granted, thus, upon him who first signs it.

This has been, in outline merely, the general course of admissions to the bar in West Virginia. It has worked well, and has also done much evil. Scores of ignorant, stupid, wicked

pettifoggers have been let loose, like wolves upon the fold; but still such characters, of necessity, soon attained their places, and where courts are held by sound, upright, able judges—as we in West Virginia can boast—no great danger can be effected, unless in the fomentation of litigation by such unworthy persons.

With great respect and esteem,

I am, very truly, yours,

JNO. A. HUTCHINSON,
Local Council for West Virginia,
Per WALTER A. LEESE.

SOUTH CAROLINA.

CHARLESTON, S. C., *July 27, 1881.*

CARLETON HUNT, Esq.,
New Orleans, Louisiana.

DEAR SIR:—Your circular, 17th June, has been received. After 1868 our practice was to admit members of the bar upon an examination before a circuit judge holding a Circuit Court, and if admitted, such person could, after three years' practise, be admitted to practise in the courts of last resort. This flooded the bar. Feeling the ill result of this, the legislature then presented a course of study, a period of study, and the age of admission. All of this was very well; but the legislature, having passed the Act, from time to time exercised the power of suspending it as to special persons named in the Acts suspending it, until at last this became a greater evil. So we procured the passage of the Act of 1879 (App. 23 Dec., 1879, 17 Statutes at Large, 56), by which any citizen of this state who has attained the age of twenty-one years, who may pass an examination upon a course prescribed by the Supreme Court, and can produce the certificate of a practising attorney of that court that he is of good moral character, can be admitted to

the bar. This relegates the matter of proficiency to the Supreme Court, the court of last resort, and, we trust, prevents any interference by the legislature.

Yours, respectfully,

CHAS. H. SIMONTON.

ALABAMA.

* * * * * * * * *

In this state it is provided by statute that any male of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, is entitled to practise in any or all the courts of this state. The application for license may be made to the Circuit, Chancery, or Supreme Court, the two former having power to license to practise in all the courts except the Supreme Court. The applicant is required to show that he is of good moral character and of the requisite age; but the Supreme Court may, in its discretion, grant a license to minors relieving them of civil disability. The statute further provides that the applicant must also be examined in open court touching his knowledge—

1. Of the law of real property.
2. Of the law of personal property.
3. Of the law of pleading and evidence.
4. Of the commercial law.
5. Of the criminal law.
6. Of chancery and chancery pleading.
7. Of the statute law of the state.

But the Supreme Court may, at its discretion, appoint a committee of three members of the bar to examine an applicant for license, either privately or in open court, and must grant or refuse license according to the report of such committee.

We have also a law department in the State University, with two professors, and on their certificate that the applicant has been a student at the university, and that he possesses the requisite qualifications, he is admitted to practise by the

Supreme Court, without examination. The Supreme Court generally, if not universally, avails itself of the power to appoint a committee whenever an examination is to be made, and the examination is had privately, generally in a corner of the library, and is more or less rigid, according to the caprice of the examiners; but the applicants are never rejected. The attorney who introduces the applicant to the court is generally chairman of the committee to examine him, and I can call to my recollection no instance in which a license was refused.

It would be difficult to devise a plan better adapted to defeat the object intended to be accomplished by an examination, and it does effectually defeat it. The practical working of the plan is to enable any lawyer in respectable standing to have admitted to practise any young man whom he is willing to introduce to the court.

The evils resulting from this plan have not been so great as to enable those who oppose it to supplant it with something better. In fact, the evils are not much greater than those which result from an examination in open court; for the court is generally very negligent in the discharge of this duty, and the responsibility assumed by a member of the bar in presenting an applicant is a safeguard against incompetency and unworthiness, probably equal to an examination in open court.

But the whole plan is upon an entirely wrong basis. Responsibility and duty are, or always ought to be, correlative; and as it is the legal profession that is most deeply interested in preserving and elevating its own standard of excellence, upon it ought to be devolved the duty of admitting new members. The law in this state devolves this duty on the court, and the court rids itself of responsibility by appointing a committee, which, in turn, virtually casts the responsibility on the lawyer who presents the applicant.

If the members of the bar were organized into a guild or corporation, and were authorized and required by law to prescribe the terms and conditions upon which new members could

be admitted, there can be little doubt that a higher standard of qualifications for admissions to the bar would result.

If this will not accomplish the purpose, it seems that the case is hopeless. We cannot rely upon the courts to elevate the professional standard in any respect, and if the profession itself has not a sufficient appreciation of its high calling to remedy the evil, the door of the profession will continue to be opened to ignorance, incompetency, and moral depravity, and those members of the profession who maintain personal self-respect, and acquire the confidence of their fellow-men, must do so on personal merit, and despite of their surroundings.

* * * * * * * *

Yours, truly,

D. S. TROY.

ARKANSAS.

HELENA, ARK., *July 11, 1881.*

CARLETON HUNT, ESQ.,
Chairman, New Orleans, La.

DEAR SIR:—* * * * * * * *

SECTION 485. Every male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, may, upon application, and in the manner hereinafter provided, be admitted to practise as an attorney and counsellor at law in the courts of this state.

SECTION 486. No judge of the Supreme, Circuit, or other court, shall have power to license any applicant to practise law; but such power shall be exercised only by the courts of the state, by proper orders, duly recorded.

SECTION 487. Every such applicant shall be examined in open court; shall, before his admission, produce to the court, by sworn petition, satisfactory proof of the foregoing qualifications, and shall take an oath to support the Constitution of the United States and of this state, and faithfully to discharge the duties of the office upon which he is about to enter.

The foregoing sections are the main ones as to the admission of applicants to the bar in our state. * * * *

Yours, very truly,

JAS. C. TAPPAN.

MISSOURI.

Conditions of Admission to the Bar, under the Statutes of Missouri.

The only general provision made by law in this state, touching admission to the bar, is found in Chapter 7 of the Revised Statutes of 1879—"of attorneys at law;" being Sections 482–486, inclusive, of said Rev. Stat., which are as follows:

Section 482. No person shall practise as an attorney or counsellor-at-law in any court of record, unless he obtain a license from the Supreme Court, the St. Louis Court of Appeals, or some circuit court.

Section 483. Any person who desires a license to practise law in this state, shall file with the clerk of the court wherein such person desires to be examined, at least fifteen days before the first day of the next term, a written application; and the clerk shall docket such application in the name of the applicant, and set the examination for some day during the same term, and the court shall proceed with the examination as hereinafter provided.

Section 484. Every applicant for license to practise law shall produce satisfactory testimonials of good moral character, and undergo a strict examination in open court by the judge or judges thereof, and the regular licensed attorneys present, as to his qualifications.

Section 485. Every person obtaining a license, shall take the oath prescribed by the constitution of this state, and an oath that he will faithfully demean himself in his practise to the best of his knowledge and ability. A certificate of such oath shall be endorsed on the license.

SECTION 486. Each clerk shall keep a roll of attorneys, which shall be a record of the court.

Section 483 is new, and the following words in Section 484, viz.: "in open court," and "and the regular licensed attorneys present;" these words being inserted in the former statute, which is otherwise identical as to this section.

These new provisions have undoubtedly elevated the standard of admission to the bar, by preventing the private and perfunctory examinations which were formerly had. In St. Louis, especially, candidates for the bar are now subjected to quite a reasonably strict examination, and it is quite a common thing for applicants to be refused admission; something which seldom happened before this statute was passed.

The only other provision in Missouri touching admission to the bar, is found in the special Act of March 5, 1874 (Sess. Acts 1874, p. 182), which provides, that "the graduates of the Law Department of the University of the State of Missouri, or St. Louis Law School, shall be entitled to be enrolled as attorneys-at-law in all the courts of record of this state, and all inferior courts thereof, without further examination, on the production by them of their diploma or certificate of graduation, duly authenticated."

Under this Act the graduates in question have been uniformly admitted without question until recently, when the question was raised in an inferior circuit court, whether the revised statutes of 1879 (above quoted) had not the effect to repeal this special Act. This question was argued a few days ago by myself in the St. Louis Court of Appeals, that court requesting such argument in view of the doubts which had been raised. At this writing the court has not passed upon the question, but will do so in a few days. Of course, it is simply a question of the construction of the statute; the judges of the Court of Appeals saying, in so many words, that they would be glad to find themselves justified in construing the Act of 1874 as still in force.

As to the "means provided, in Missouri, by public authority or otherwise, for promoting and facilitating the study of the law," I would remark that the State University, at Columbia, Mo., and Washington University, at St. Louis, each maintain a law school, both of which are conducted with a reasonable degree of success.

* * * * * * * * * * *

HENRY HITCHCOCK.

TENNESSEE.

BOLIVAR, TENN., *June 30, 1881.*

HON. CARLETON HUNT,
Chairman Committee on Legal Education,
American Bar Association.

MY DEAR SIR:—In this state the applicant has to take an oath (which, of course, any applicant would take). He has to get a sort of certificate as to age and moral character from the county court (which has never been refused within the memory of man), and he has to stand an examination before two judges or chancellors, who will, being satisfied, grant him license. Ordinarily, his examination is perfunctory, and the grant of license comes as a matter of course. I don't remember of but one instance where license was refused. I remember my own came to me without any examination at all.

Our law school at Lebanon, in this state, is authorized to grant license also.

The inroads of ignorance and quackery into our profession not only injure the profession greatly and drag down its tone, but injure the community and public at large; for, as I believe, properly organized and guarded, it would conserve, more than aught else, the moral, social, and political well-being of the country.

The difficulties in the way of an association like ours in securing proper methods and needed reforms are chiefly the

want of thought and loose appreciation of the public on the subject (their need of lawyers and their use to the common weal), with jealousy of the bar and its influence, and again, the demagogy of our legislatures in catering to this feeling.

I don't know that I can suggest anything more than that there should be in each state some fixed, permanent, and responsible board of examiners, either to examine in person or pass upon the examination made by others. The applicant should at least have a general education, fairly good, beside his law investigations, and should not be "turned loose" as a lawyer, merely because he asked it. I have great respect for the bench and ordinarily the men who sit on it; but few men know how to say no, and it will not do to leave the matter to any and every judge or chancellor.

There should be a permanent, responsible board, and a competent one.

Asking you to excuse for writing so much, I am

Yours, sincerely,

ALBERT T. McNEAL.

KENTUCKY.

WHITE SULPHUR SPRINGS, *30th July, 1881.*

MY DEAR SIR:—* * * * * * * * *

The qualifications for the admission of members to the bar in Kentucky are nearly the same now that they were when the state was admitted into the Union. The applicant must be of age, and produce a certificate from the county court where he has resided, to the effect that he is a person of honesty, probity, and good demeanor, and, after such evidence, the judges of the Circuit Court to whom it is offered appoint examiners from the members of the bar to inquire into and report as to the propriety of the admission of the applicant. These examiners are

sworn to discharge their duties faithfully, and to report as to the acquirements and competency of the applicants, and, if the report be favorable, license is granted.

The certificate may also be presented to any two of the judges of the Court of Appeals, who have power to examine the applicant, and to grant or withhold the license.

We have not placed very strict guards against granting licenses, because the applicants are usually well known to the judges, as we have very few applicants who are emigrants from other states or countries.

The law schools at Louisville and Lexington grant diplomas after two years' study and attendance on the lectures, and when degrees are granted, the graduates are admitted to the bar as a matter of right, without any further evidence of competence.

I think, from the views expressed to me by our most experienced counsellors and professors, as well as from my own observation, that a higher standard of academic or collegiate education should be established in our law schools for admission, and in our courts for licenses to practise. It is true that by industry and native vigor of intellect a young man may often succeed at the bar and rise to distinction, who originally could not spell correctly, or write grammatically, but he must afterwards remedy such ignorance, or endure many humiliations in his career. To remedy such early neglects requires usually vast labor, when time is money to the lawyer, and in many cases discourages men who, by their moral dignity and good sense, with ordinary preparation, would have adorned the profession and attained celebrity as jurists. It is obvious that a clear knowledge of English grammar is essential, and also such an acquaintance with etymology as, every lawyer knows, is indispensable in the interpretation of statutes, contracts, wills, and writings, in the every-day practise of the law. As the law terms in present use are nearly all derived from primary Latin terms of the civil law transplanted into the common law, the knowledge of Latin, to some extent, will always give its possessor powers beyond the reach of those who are entirely ignorant of

the fountains of modern law. Hence, in my judgment, no young man can safely, in the present state of education, hope to reach distinction at the bar or on the bench in America hereafter, without good academic or some collegiate culture, except in extraordinary and exceptional instances, where nature has been prodigal in her gifts, and industry has stimulated the possessors to self-education in mature life.

It seems to me that the standard of admission to the bar cannot now be placed in this country at the elevated point fixed at London or Paris. Our social system, the ardor of our youth to embark in life, the impossibility of restraining it beyond the age of legal freedom, and other considerations that might be enumerated, would render the imposition of such conditions impracticable at this time in this country. If, for instance, we look to the condition of the law in France, which has a less population and more centralized political and educational system than the United States, it is clear that our legislatures would never establish such a complex machinery for the education of the bar, or exact such accomplishments for admission to its privileges as those required in France. Eleven schools of law under the Napoleonic system have supplanted the old university without producing a giant to rival or eclipse Domat or Pothier. Though jurisprudence is subdivided into special branches, with multiplied professorships, and produces a certain precision of learning in special branches, it does not seem to advance general learning, but to contract the reasoning powers, as we rarely find in medical science a dentist or oculist who has any celebrity in pathology or the higher scientific branches of knowledge. The lectures given are free, but that does not compensate for the ordeal of four years, after long academic preparation, before the student can acquire his degree. The graduate learns under the Code of Procedure, the Code of Commerce, the Penal Code, or the Civil Code, certain formulæ, but acquires a feeble idea of the principles and theory of jurisprudence, or its history, without which all knowledge of the rules presented is barren and imperfect pedantry.

I have made these remarks because, in my opinion, no Cicero or Grotius, no Domat or Pothier will be produced under such a system as I saw in France. The competitive examinations struck me as illusory, and the *concours* as not well calculated to give that breadth and depth of knowledge that marked a Mansfield or Hardwicke, or that great civil lawyer, Lord Stowell, or our own Marshall, Story, and Kent.

Three years are necessary for the *examen de licence*, and in the fourth year the licentiate in France may receive his degree and attend the *concours*. From this mass of men, thus elaborately educated, the law officers are chosen and the bench is filled. But in this country, where, in thirty-eight states, still increasing in number, the law officers, such as attorneys-general, district attorneys, sheriffs, and judges are chosen by popular election, no system like that of France is possible. The long preparations at the *Lycées*, and the didactic learning of the *Facultés de Droit* would never be tolerated by our legislatures, or endured by our people.

I have thus touched briefly on the French system, because the mode of admission in England is well known, and is loose and essentially different. Admission to the bar in England requires higher scholarly culture than in America, but really little legal information, and the extreme classic culture of the great schools is only a preparation for the bar, soon forgotten.

Whilst, therefore, in my judgment, the high instructions and great subdivision of legal learning in France may, perhaps, suit its society and civilization, and perhaps offers a model for legal training in that country, still it is not suited to America, and should not be imitated in our country. The traditions of the English and Irish Bar, and the reports at the latter part of the last century, when Curran and Lord Redesdale, Eldon and Stowell, Mansfield and Kenyon shone both as jurists and statesmen, demonstrate how high a point a less exact, but more liberal system, may reach, and that the gradual evolution of legal science may, by gradual encouragement and lifting the

standard little by little, achieve a still greater eminence in the future for the bench and bar of America.

I remain, with great respect, yours,

W. PRESTON.

HON. CARLETON HUNT,
Saratoga, New York.

LOUISVILLE, *July 28, 1881.*

* * * * * * * *

But for all practical purposes the certificates and examinations are things of the merest form. It is a most rare occurrence for any candidates (that is, before the judges) to be rejected.

* * * * * * * *

We have two law schools—one here, the other at Lexington—diplomas from which entitle the holders to license. The preparation from these is better than the average.

The question of reform in this direction has been much discussed by the better bar, but no settled opinion as to a practical method has been reached.

It is thought by some (among whom I am) that good results might be reached by giving the diploma right to a single school under the immediate patronage of the state, and of requiring every candidate to pass a rigorous examination before a committee of the appellate bar, appointed by the judges to act under oath, and to receive salaries. If such a course could once be inaugurated, I think that beneficial results would speedily follow.

Very respectfully, yours,

JOHN MASON BROWN.

OHIO.

CINCINNATI, *July, 1881.*

CARLETON HUNT, ESQ.,
Chairman of Committee on Legal Education.

DEAR SIR:—The qualifications required by the statutes of Ohio for admission to the bar are, examination by the Supreme Court, or a commission appointed by the court to assist it; and to be admitted to such examination the applicant must be proved to be twenty-one years of age and a citizen, or one who has declared his intention to become a citizen of the United States, and to have resided one year in the state; and he must also produce the certificate of an attorney-at-law that the applicant is of good moral character, that he has regularly and attentively studied law for two years previously, and that the attorney certifying believes him to be a person of sufficient legal knowledge and ability to discharge the duties of an attorney and counsellor-at-law.

If the judges of the Supreme Court are satisfied, upon such examination and proof, that the applicant is of good moral character and has a competent knowledge of law and sufficient general learning, he is admitted, by an order of the court, after taking an oath of office, to practise in all the courts of the state. These examinations are held at the capital of the state, monthly, and under certain rules and regulations prescribed by the court. They are generally written, but may be oral.

A person coming into the state to reside, and producing satisfactory evidence that he has studied law for two years under the tuition of an attorney-at-law, and that he has been regularly admitted in another state as attorney and counsellor-at-law, or that he has practised law in another state or territory for two years, may also be admitted to such examinations, upon proof that he is of good moral character.

Under further provisions of the statute, the Supreme Court, upon the application of the faculty of any law college duly

organized in the state, appoint a commission of attorneys-at-law to attend the commencement exercises of such college, and examine its graduates in regard to their qualifications to practise law, and upon the return of such examination papers and report of the commission, and proof of the same, requirements as to age, residence, and citizenship, but without requiring the two years' term of study, the Supreme Court, if satisfied, will in like manner admit such graduates to the bar.

In addition to this statement of the existing provisions made by the laws of Ohio for promoting and facilitating the study of the law, I will only venture, in response to your circular, to suggest that the most direct, if not the best means for elevating the standard of qualifications, will be to unite in a common legislative movement, in all the states, for making a course of at least three years' study essential before examination and admission to the bar. How inadequate this is, no one feels more keenly than the young practitioner with his first case.

Very respectfully, yours,

RUFUS KING.

INDIANA.

FORT WAYNE, IND., *July 20, 1881.*

MY DEAR SIR:—* * * * * *

It is provided by the constitution of Indiana that every person of good moral character, being a voter, shall be entitled to admission to practise law in all courts of justice. Article 7, section 21, Constitution of 1852.

* * * * * * * *

In the face of such a constitutional provision it is, of course, impossible for the profession to use any means towards its own elevation, except such as consist in example and individual and associated effort.

Very truly, yours,

R. S. TAYLOR.

ILLINOIS.

BELLEVILLE, ILLS., *July 27, 1881.*

HON. CARLETON HUNT,
Chairman Committee on Legal Education,
New Orleans, La.

DEAR SIR:—The general law of this state, in force since many years, requires every person who practises law to have a license from some two of the justices of the Supreme Court.

In order to receive such license he must produce a certificate of good moral character from some court of record.

It will be seen that the law itself requires no previous examination of the applicant, or other documentary evidence of a legal education.

But the Supreme Court have always understood it to be their duty to have some evidence of the applicant's legal qualifications.

Sometimes they examined, themselves, sometimes they appointed committees of lawyers to examine in vacation, and sometimes they had committees examine applicants in open session.

As a general thing there was much looseness, and hardly a case occurred where admission was refused.

Of late years the Supreme Court have adopted more definite rules, and those at present in existence, and since an intermediate appellate court has been established, are to be found in 93d of Illinois, p. 12, and are rules 45, 46, 47, 48, and 49, and are as follows:

45. Every applicant for license to practise law in the courts of this state, except those who apply for admission upon a license granted in another state, or upon a diploma issued by a law school, or upon an examination had before one of the appellate courts of this state, may be allowed, upon notice given, to appear before the Supreme Court at one of its regular terms in any of the grand divisions, and then and there, in open court,

be examined by the court touching his qualifications as an attorney and counsellor-at-law, and shall also then and there present to the court a certificate from some court of record of the county in which such applicant resides, of good moral character: *Provided, however,* It shall be a requisite of such examination that such applicant shall have pursued a regular course of law studies in the office of some lawyer in general practise for at least two years, of which fact he shall satisfy the court by the certificate of such lawyer and his own affidavit: *Provided further,* That the time employed at any law school as a law student shall be considered as part of the two years, of which the court shall be satisfied in the manner above specified. Thursday of the first week of each term shall be the day on which such examination shall be had, when so allowed.

46. The appellate courts in the several appellate districts are authorized to examine applicants for admission to the bar, in open court, subject to the same rules for admission to examination and in regard to qualifications as are applicable to like admissions and examinations in this court; and licenses will hereafter be issued by judges of this court in term time, on certificates from such court, under the seal thereof, showing that the applicants have been admitted to and passed such examinations, and been found entitled to be admitted to the bar: *Provided,* That such certificate be accompanied with the affidavit of the applicant or some other credible person, that he is of the age of twenty-one years or over, and a citizen of the state, and also a certified transcript from a court of record in this state showing that he is a man of good moral character. But no applicant who sh all be rejected shall be permitted to be again examined within less than six months from the time of such rejection.

LICENSING ATTORNEYS UPON DIPLOMA.

47. A diploma regularly issued by any law school, regularly organized under the laws of this state, whose regular course of law studies is two years, and requiring an actual at-

tendance by the student of at least thirty-six weeks in each of such years, may be received and acted upon in the place and stead of the examination in open court, required by rule 45; but every application for admission to the bar, made on behalf of any person to whom any diploma, as aforesaid, has been awarded, must be made in term time, by motion of some attorney of this court, supported by the usnal proofs of good moral character and the production in court of such diploma, or satisfactorily accounting by affidavit for its non-production; and in all cases when the diploma on which the application is based does not recite all the facts requisite to its reception, all such omitted facts must be shown by the affidavit of the applicant, or some officer of the law school, or both.

LICENSING ATTORNEYS FROM OTHER STATES.

48. Any application for admission to the bar, based upon a license granted in another state, must be made in term time by motion of some attorney of this court, made in open court, and no applicant will be admitted upon such license without examination, except it appear to the court, by affidavit or otherwise, that in the state in which the license was issued, a course of study was required at least equal to that prescribed in this state by the 45th rule, or the applicant has been engaged in active practise for a period of two years under license.

LICENSES—BY WHOM ISSUED.

49. Licenses which may be granted upon such applications may be prepared for signature of the judges by the clerk of the grand division in which the order of admission shall be made.

It must be understood, however, that the old practice is in part retained, inasmuch as the examination is not exactly made by the court, but generally by a committee of lawyers requested by the court to put questions in the presence of the court, and that such committees recommend admission or rejection.

Those rules are undoubtedly an improvement upon the former modes of admission, and if there was a strict and thorough

examination under those rules, but few entirely unqualified persons would be admitted.

But the number of candidates for admission is so great at every session of these different courts, the time devoted to examination so short, that practically passing through such an examination furnishes but a very inadequate test of qualification.

But few questions can be asked of each candidate, and no written papers on legal subjects are required.

The well-established fact that nearly all applicants are admitted, and that rejections are rare exceptions, seems to furnish evidence of the mere elementary character of the questions usually put.

As a preliminary to an examination an applicant must either produce a license from another state or a diploma of any law school (of Illinois), or a certificate of any lawyer in general practise, showing that he has pursued a regular course of law studies in the office.

Regarding the latter requisition, kindness and courtesy very often induce lawyers to give such certificates, although the student may have made very little progress, and may have devoted but little time to his law books.

It may be said that in most cases those certificates amount to but very little. There are some highly respectable law schools in Illinois, being, however, all private corporations, and a diploma from such institutions should carry considerable weight. But the truth is, that the admission to those law schools is open to anybody who can pay for the tuition, and although a graduate of such a school may have acquired a pretty good theoretical knowledge of law, yet he may in all other respects be very little informed.

Such persons, without having obtained a general, liberal, and, not to mince matters, a *classical* education, are too apt to take up the profession as a business merely. To make as fast as possible a good living in the profession, no matter how, will, as a general thing, be the principal, if not the only, pursuit of such half-educated persons. They are very apt to succeed, too,

but it is on the degradation of their honorable profession. It is a lamentable fact that the ethics of the legal profession, in spite of perhaps a greater degree of proficiency and ability, have deteriorated from what they formerly were.

It is to be hoped that the National and State Bar Associations will, in time, stop the progress of deterioration. They may be considered as one of the remedies to elevate the profession. But, in my opinion, the most effective remedy would be to require of every candidate not only a diploma of a law school, but a diploma of some reputable college, testifying to the fact that the graduate has received a thorough classical education.

This requirement may appear here aristocratic, but in all other civilized countries the idea that one could be a member of the bar or a judge without having received the most liberal education, is looked upon not only as wrong, but as absolutely absurd. It may be, however, after all, that we are right, and that all the nations of Europe are utterly mistaken.

With the greatest regard, yours,

GUSTAVE KOERNER.

WISCONSIN.

CARLETON HUNT, ESQ.,

Chairman.

MY DEAR SIR:—Enclosed I hand you the statutory provision of Wisconsin regulating admissions to the bar, and also a pamphlet issued by the Law Department of the University of Wisconsin, showing the course of instruction in that department.

I trust some plan may be devised by the American Bar Association, and adopted throughout the country, which will elevate the standard of qualifications for admission to the bar, and thereby elevate the profession.

Yours, very truly,

ALFRED L. CARY.

REVISED STATUTES OF WISCONSIN FOR 1878.

SECTION 2586. No person shall be admitted or licensed to practise as an attorney of any court of record, except in the manner following:

1. All graduates of the Law Department of the University of Wisconsin shall be admitted to the bar of all the courts, upon the production of his diploma, duly issued by the board of regents thereof, and such graduates may be admitted to the Supreme Court, when not in session, by an order signed by one of the justices thereof, and filed with the clerk.

2. All persons who shall have been admitted to practise in the Supreme Court of any other state or territory, and who shall be residents of this state, may be admitted upon production of their certificates of admission to practise in such courts of such other state or territory.

3. Every other person who shall be of full age, a resident of this state, and of the judicial circuit wherein he applies for admission, and of good moral character, may be admitted to practise as an attorney in all courts of record, except the Supreme Court, by order of a judge of the Circuit Court, made in open court; but the applicant shall be first examined in open court by the judge, or examiners appointed by him, and shall thereby satisfy such judge that he possesses sufficient learning in the law and ability to enable him to properly practise as such attorney; the residence and age of the applicant shall be made to appear by affidavit.

4. No person shall be entitled to practise as an attorney in the Supreme Court, until he shall first be licensed so to do by said court.

5. No person shall be denied admission or license to practise as an attorney in any court in this state on account of sex.

IOWA.

MY DEAR SIR:—

* * * * * * * *

Any person twenty-one years of age, an inhabitant of this state, who satisfies any court of record that he or *she* possesses the requisite learning, and is of good moral character, may by such court be admitted to practise as attorney and counsellor in any court of the state.

* * * * * * * *

It is also provided that graduates of the law department of our state university shall be admitted to practise, in all our courts, upon the production of their diploma, and taking the oath prescribed by law.

The only other provision material to be mentioned, is that any attorney of any other state having professional business in our courts, may be here admitted upon taking the oath aforesaid.

* * * * * * * *

Yours, with very great respect,

GEORGE G. WRIGHT,

per L.

NEBRASKA.

CARLETON HUNT, ESQ.

MY DEAR SIR:—Your circular letter of the 17th ultimo is received. The statutes of Nebraska provide as follows:

"No person shall be admitted to practise as an attorney in the supreme and district courts of this state hereafter, unless such person shall have previously studied in the office of a practising attorney for the period of two years, and pass a satisfactory examination upon the principles of the common law, under

the direction of the court to which application is made, and it is shown to the satisfaction of said court that such applicant sustains a good moral character."

There is great difficulty in compelling adequate preparation for admission to the bar in the western states. The pressure of young men is excessive. The profession here is full of men without considerable general culture. They cannot, therefore, well appreciate it, nor are they naturally disposed to require it of others. Those of them who, by force of their own character and labor, have to a degree supplied the deficiencies of early training and duly value the advantages of adequate preparation for the bar, are vastly outnumbered by those who have not attained to the elevation of a due estimate of those advantages.

A young man who has passed through the usual college curriculum, with the usual diligence, cannot in two, or even three, years acquire such a knowledge of the law as to fit him to take charge of the interests of others in the controversies of business and in the courts. Much may be done in that time, and yet it all amounts to but little more than a capacity to experiment upon the cases of his clients. At the same time we must feel the necessity of accepting such a term of preparation as all that can at this time be imposed.

I am strongly of the opinion that, properly employed, this term of study can be rendered sufficient. But it must be by utilizing a certain portion of the college curriculum. I would not reduce it nor encumber it with the study of technical law. Already it is none too long, and it is certainly encumbered with a great excess of subjects of attention. But why should the man who is to be a lawyer be compelled to waste on books foreign to his destined pursuits, the time which may be devoted to what prepares him for studies which fit him for those pursuits?

We can all remember how difficult of apprehension were the nature of legal notions when we began our professional studies. What distress, and at times despair, we suffered in trying to

assimilate them. Now, there are subjects of study which prepare the mind for the acceptance of those notions. Among them may be mentioned English history, and particularly the history of legal institutions, logic in the severest and most extended course, certain subjects of metaphysical science, and the civil law. Let the junior and senior year in college be occupied by these subjects instead of many which will occur to you which now vex and distract the student's mind to no purpose but mere "discipline," and the same valuable advantage of training will be enjoyed, together with the other and equally valuable advantage of fitting the mind for the comprehension of notions peculiar to our artificial and refined science of English jurisprudence.

This is a reform which is practicable. It is not very unlike the English system of legal education, for in the English universities one or two years out of the three which form the term of residence may be passed in the schools of law and history.

Yours, truly,

JAMES M. WOOLWORTH.

NOTE.—A decision of the case referred to on page 284, has been made, to the effect that the Act of 1874 was not repealed by the statutes of 1879.

The following tables are from an article by Francis L. Wellman, published in 15 American Law Review, 295.

Table of requirements for admission to the Bar in the several states of the United States and the District of Columbia.

	Good moral character, citizenship of the United States, and twenty-one years of age.	Definite term of pupilage.	Allowance in term of pupilage made to college graduates.	Preliminary examination in English, Latin, mathematics, etc.	Filing of certificate at commencement of study.	One year of clerkship in a law office.	Prescribed course of reading.	Paid Examiners.
Alabama								
Arkansas								
California							California.	
Colorado		Colorado (2 years).						
Connecticut		Connecticut (New Haven County, 3 years).	Connecticut (1 year).					
Delaware		Delaware (3 years).		Delaware.				
Florida								
Georgia								
Illinois		Illinois (2 years).						
Indiana								
Iowa								
Kansas		Kansas (2 years).				Kansas.		
Kentucky								
Louisiana							Louisiana.	
Maine								
Maryland		Maryland (2 years).						
Massachusetts								
Michigan								
Minnesota								
Mississippi								
Missouri								
Nebraska		Nebraska (2 years).						
Nevada								

Table—Continued.

Good moral character, citizenship of the United States, and twenty-one years of age.	Definite term of pupilage.	Allowance in term of pupilage made to college graduates.	Preliminary examination in English, Latin, mathematics, etc.	Filing of certificate at commencement of study.	One year of clerkship in a law office.	Prescribed course of reading.	Paid Examiners.
New Hampshire	New Hampshire (3 years).			New Hampshire.			New Hampshire.
New Jersey	New Jersey (4 years).	New Jersey (1 year).					
New York	New York (3 years attorney, 4 years counsellor).	New York (1 year).			New York.		
North Carolina						North Carolina.	
Ohio	Ohio (2 years).						
Oregon	Oregon (3 years).	Oregon (1 year).				Oregon.	
Pennsylvania	Pennsylvania (3 years minors, 2 years adults).		Pennsylvania.	Pennsylvania.	Pennsylvania.	Pennsylvania.	
Rhode Island	Rhode Island (3 years).	Rhode Island (1 year).			Rhode Island (6 months).		
South Carolina						South Carolina.	
Tennessee							
Texas						Texas.	
Vermont	Vermont (5 years).	Vermont (2½ years).					
Virginia							
West Virginia							
Wisconsin							
District of Columbia	District of Columbia (3 years).						

Table of requirements for admission to the Bar in the several states of the United States and the District of Columbia.

Oral method of Examination.	Written method of Examination.	Certain law school diplomas admit in lieu of public examination.	Women admitted.
Alabama		Alabama.	
Arkansas			
California		California.	
Colorado			
Connecticut			
Delaware			
Florida			
Georgia		Georgia.	
Illinois		Illinois.	Illinois.
		Indiana.	
Iowa		Iowa.	Iowa.
Kansas			Kansas.
Kentucky		Kentucky.	
Louisiana	In Law Department University of Louisiana	Louisiana.	
Maine			Maine.
Maryland			
Massachusetts	Massachusetts (in some counties).		
Michigan		Michigan.	Michigan.
Minnesota			Minnesota.
Mississippi		Mississippi.	
Missouri			
Nebraska			
Nevada	Nevada.		Nevada (by Act of 1881).
New Hampshire	New Hampshire.		
New Jersey			
New York	New York (in some departments).	New York (special legislation).	
North Carolina			North Carolina.
Ohio			Ohio.
Oregon		Oregon.	
Pennsylvania		Pennsylvania.	
Rhode Island	Rhode Island.		
South Carolina			
Tennessee		Tennessee.	
Texas			
Vermont			
Virginia		Judges ask no questions of persons holding law degree.	
West Virginia		West Virginia.	
Wisconsin		Wisconsin.	Wisconsin.
	District of Columbia.		District of Columbia.
Canada	Canada.		

INDEX.

PAGE

Annual Address by C. N. Potter, ... 175–198
Association for Reform and Codification of Law of Nations, . 6, 11, 26
Bankrupt Law, Advantages of a National, Paper on, . . . 223–235
Bankrupt Law, Execution of by State Courts, ... 33
By-Laws, ... 99
Committees, list of, ... 107–108
Constitution, ... 95
Constitutional Law, Debate on Appointment of Committee on, . 11, 85
Commission of Legislation, Discussion of the Appointment of, . 47–55
Cooley, Thomas M., Paper by, ... 199–221
Courts of United States—Debate on Delay of Causes in, . 41–45, 68–84
Appointment of Committee on, ... 86
Delay of Causes in Federal Courts, Debate on, ... 41–45, 68–84
Appointment of Committee on, ... 86
Dinner, annual, ... 94
Divorce Laws, Report on, ... 32
Election of Officers, ... 66
Legislation, Debate on Appointment of Commission of, . . . 47–55
Louisiana, Remarks on Law of, by T. J. Semmes, ... 56–66
Meeting of Association, next annual, ... 45, 66
Members, list of, ... 109–123
Members, list of new, ... 89–93
Obituary Committee, Appointment of, ... 46
Obituary Notices—
Calvin G. Child, ... 124
LaFayette S. Foster, ... 128
Origen S. Seymour, ... 135
O. H. Browning, ... 136
T. S. Linthicum, ... 137
Officers, list of, ... 102–106
Officers, election of, ... 66
Parliamentary Rules, Appointment of a Committee on, ... 55
Patents for Land, Cancellation of by Executive Officer, ... 31
Phelps, Edward J., Address of 142–173
Potter, Clarkson N., Address of, ... 175–198
President's Address, ... 142–173

PAGE
Publications, Appointment of Committee on, ... 86
Recording Laws of the United States, Paper on, ... 199–221
Reports of—
Secretary, ... 7
Treasurer, ... 10, 87
Executive Committee, ... 10
Committee on—
Commercial Law, ... 40
Legal Education, etc., ... 27, 237
Jurisprudence, etc., ... 30
Judicial Administration, etc., ... 32, 84
Publications, ... 40
International Law, ... 40
Semmes, Thomas J., Remarks on Louisiana Law by, . . . 56–66
Taney, R. B., Address on, by C. N. Potter, ... 175–198
Testimony, Report of Committee on taking, ... 32
Wagner, Samuel, Paper by, ... 223–235

1 503SL BR 4165
12/92 53-004-07

Revised Statutes of Wisconsin for 1878.

Section 2586. No person shall be admitted or licensed to practise as an attorney of any court of record, except in the manner following:

1. All graduates of the Law Department of the University of Wisconsin shall be admitted to the bar of all the courts, upon the production of his diploma, duly issued by the board of regents thereof, and such graduates may be admitted to the Supreme Court, when not in session, by an order signed by one of the justices thereof, and filed with the clerk.

2. All persons who shall have been admitted to practise in the Supreme Court of any other state or territory, and who shall be residents of this state, may be admitted upon production of their certificates of admission to practise in such courts of such other state or territory.

3. Every other person who shall be of full age, a resident of this state, and of the judicial circuit wherein he applies for admission, and of good moral character, may be admitted to practise as an attorney in all courts of record, except the Supreme Court, by order of a judge of the Circuit Court, made in open court; but the applicant shall be first examined in open court by the judge, or examiners appointed by him, and shall thereby satisfy such judge that he possesses sufficient learning in the law and ability to enable him to properly practise as such attorney; the residence and age of the applicant shall be made to appear by affidavit.

4. No person shall be entitled to practise as an attorney in the Supreme Court, until he shall first be licensed so to do by said court.

5. No person shall be denied admission or license to practise as an attorney in any court in this state on account of sex.

IOWA.

My Dear Sir:—

* * * * * * * *

Any person twenty-one years of age, an inhabitant of this state, who satisfies any court of record that he or *she* possesses the requisite learning, and is of good moral character, may by such court be admitted to practise as attorney and counsellor in any court of the state.

* * * * * * * *

It is also provided that graduates of the law department of our state university shall be admitted to practise, in all our courts, upon the production of their diploma, and taking the oath prescribed by law.

The only other provision material to be mentioned, is that any attorney of any other state having professional business in our courts, may be here admitted upon taking the oath aforesaid.

* * * * * * * *

Yours, with very great respect,

GEORGE G. WRIGHT,

per L.

NEBRASKA.

Carleton Hunt, Esq.

My Dear Sir:—Your circular letter of the 17th ultimo is received. The statutes of Nebraska provide as follows:

"No person shall be admitted to practise as an attorney in the supreme and district courts of this state hereafter, unless such person shall have previously studied in the office of a practising attorney for the period of two years, and pass a satisfactory examination upon the principles of the common law, under